

***United States Court of Appeals  
for the Second Circuit***



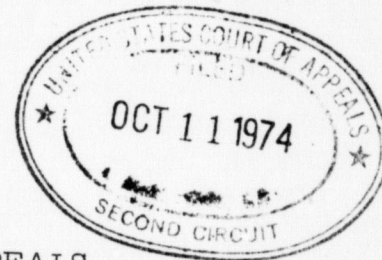
**APPELLANT'S  
APPENDIX**





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74-2121



IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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THE UNITED STATES OF AMERICA,

Appellee,

-against-

FRITZ EMANUEL BASTIAN,

Defendant-Appellant.

---

APPELLANT'S APPENDIX

---

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DOCKET ENTRIES

January 17th, 1974	Indictment filed
January 24th, 1974	Defendant Bastian pleads "Not Guilty"
January 25th, 1974	Government files Notice of Readiness
June 13th, 1974	Pretrial Hearings
June 14th, 1974	Pretrial Hearing
June 17th, 1974	Trial
June 18th, 1974	Defense Rests. Summations. The Court charges jury. Jury returns with verdicts of Guilty on Counts One and Two.

2a

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

2a

-----X  
THE UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

Docket No.  
74 Cr. 34

FRITZ EMANUAL BASTIAN,

Defendant-Appellant.

NOTICE OF APPEAL

-----X  
S I R S :

PLEASE TAKE NOTICE, that the defendant-appellant herein hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment of Conviction rendered against him on August 2nd, 1974, and imposed by the HONORABLE THOMAS C. PLATT, a Judge of the District Court for the Eastern District of New York, and sentencing the defendant-appellant herein to two terms of twelve (12) years to run concurrent under 18 U.S.C. § 4208 (a2) and from each and every part of said judgment.

DATED: Brooklyn, New York, August 7th, 1974.

Yours, etc.,

FRANK A. LOPEZ  
Attorney for Defendant-Appellant  
FRITZ EMANUAL BASTIAN  
31 Smith Street  
Brooklyn, New York 11201  
Tel. #(212) 237-9500

FILED  
8/8/74  
TO:

ATTENTION: A. U. A. JOAN S. O'BRIEN  
United States Attorney  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

CLERK, Above-Captioned Court

FRITZ EMANUAL BASTIAN  
Federal House of Detention  
427 West Street  
New York, New York



TPP:JOB:sj  
FA 741,034

TPP:JOB:sj  
FA 741,034

3a  
UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X  
UNITED STATES OF AMERICA

- against -

FRITZ EMANUAL BASTIAN,  
LARRY COATES and  
LARRY DERRICK,

Defendants.  
----- X

3a  
Cr. No. 74cr34  
(T. 18, U.S.C., §2113(a)  
and §2113(d))

1-17-74

Judd, J

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 12th day of December 1973, within the Eastern District of New York, the defendants FRITZ EMANUAL BASTIAN, LARRY COATES and LARRY DERRICK knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the National Bank of North America, 152-80 Rockaway Blvd., Queens, New York, approximately Seventeen Thousand Thirty-eight Dollars and Forty-nine Cents (\$17,038.49), in United States currency, which money was in the care, custody, control, management and possession of the said bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation. (Title 18, United States Code, Section 2113(a)).

COUNT TWO

On or about the 12th day of December 1973, within the Eastern District of New York, the defendants FRITZ EMANUAL BASTIAN, LARRY COATES and LARRY DERRICK knowingly and wilfully, by force, violence, and intimidation, did take from the person and presence of employees of the National Bank of North America, 152-80 Rockaway Blvd., Queens, New York, approximately Seventeen Thousand Thirty-eight Dollars and Forty-nine Cents (\$17,038.49),

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-2-

in United States currency, which money was in the care, custody, control, management and possession of the said bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation and in commission of this act and offense the defendants FRITZ EMANUEL BASTIAN, LARRY COATES and LARRY DERRICK, did assault and place in jeopardy the lives of the said bank employees, as well as the lives of other persons present by the use of a dangerous weapon. (Title 18, United States Code, Section 2113(d)).

A TRUE BILL.

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FOREMAN.

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UNITED STATES ATTORNEY



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THE COURT: As I understand, Mr. Lopez, the burden is on you in these hearings.

MR. LOPEZ: Does your Honor wish that I move first?

THE COURT: Yes.

MR. LOPEZ: I call the defendant, Mr. Bastian, to the stand, your Honor.

F R I T Z      E M A N U E L      B A S T I A N, called as a witness on his own behalf, being first duly sworn by the Clerk of the Court, assumed the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. LOPEZ:

Q      Mr. Bastian, do you recall the day in which you were arrested with regard to this case?

A      Yes, sir.

Q      What date was that?

A      January 9th.

Q      Of what year?

A      This year, 1974.

Q      Now, at the time on January 8th to January 9th, do you recall where you were living at the time?

A      Yes, sir.

MR. LOPEZ: Your Honor, may I make another



1  
2 application? May I make a motion to exclude any other  
3 witnesses that may be called, until suchtime that  
4 they are needed by the Court?

5 MS. O'BRIEN: I have no objection to letting  
6 Mr. Coulson step outside, but during the trial, I  
7 would request that he sit at counsel table.

8 MR. LOPEZ: There is no problem at this point.  
9 I think this is the crucial part of the testimony,  
10 at any event.

11 (Whereupon, agent was excluded from the  
12 courtroom)

13 DIRECT EXAMINATION

14 BY MR. LOPEZ (continuing):

15 Q I am sorry to have interrupted you. Where did  
16 you spend the night on January 8, 1974?

17 A January 8, 1974, I spent the night in a  
18 rooming house on Arlington Terrace, I don't remember the name.

19 Q The address?

20 A But it was --

21 THE COURT: In New York City?

22 THE WITNESS: In Queens, in the district of  
23 Queens, New York.

24 BY MR. LOPEZ:

25 Q Sometime during the day in which you were

7a

Bastian-direct

11

1  
2 arrested, something happened to you; isn't that correct,  
3 around noontime; is that correct?

4 A Yes.

5 Q Will you please, in your own words, relate  
6 to his Honor exactly what transpired, leading up to your  
7 arrest?

8 A Yes, sir.

9 On or about the 9th of January, approximately  
10 between the hour of 1:30 and 2:30 --

11 THE COURT: In the afternoon?

12 THE WITNESS: In the afternoon, yes, sir.

13 I entered a, a grocery store and attempted  
14 to pawn a coat because I was ill from a drug with-  
15 drawal, while in the store I bought a package of  
16 cigarettes and I noted Larry Cokes coming from the  
17 back of the store.

18 When I went over to Larry, bargaining for the  
19 coat to get a loan to get some narcotics, because  
20 I was ill.

21 At that time, while I was speaking to Larry,  
22 a fellow in the store who happened to be the cashier  
23 at the time hollered over to Larry and told Larry  
24 that the police were looking for him again.

25 Larry and I then looked towards the window and



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Bastian-direct

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1 we saw a detective's car cruising past the store.

2  
3 When the detective's car passed the view of  
4 the window, Larry immediately headed toward the back  
5 exit of the store and left me standing there, taking  
6 my coat with him.

7 I then decided to leave the store because --

8 THE COURT: Let me interrupt you.

9 Were you attempting to pawn your coat with  
10 Larry Cokes or the cashier of the store?

11 THE WITNESS: I went into the store to buy a  
12 pack of cigarettes, but I was in the area to find  
13 someone who I could pawn the coat to, and then I saw  
14 Larry. He normally buys clothes off me.

15 THE COURT: Did you attempt to sell this coat?

16 THE WITNESS: I attempted to negotiate a loan  
17 until I could pay him back.

18 THE COURT: I'm sorry for interrupting you.

19 MS. O'BRIEN: May we have an identification of  
20 the store and its location?

21 BY MR. LOPEZ:

22 Q Did you recall where the store is?

23 A On 150th Street near 107th Avenue in the  
24 District of Queens, New York.

25 MS. O'BRIEN: Is there a name?

1 THE WITNESS: The New Look Delicatessen.

2 THE COURT: You have gotten to the point where  
3 Cokes started heading out of the back of the store.

4 THE WITNESS: He made an exit towards the back  
5 of the store.

6 At that time I decided to leave the store  
7 because of the fact of the police cruising around  
8 the area.

9 I then left the store -

10 THE COURT: By the front or back exits?

11 THE WITNESS: From the front exit.

12 I left the store through the front exit and  
13 went towards the corner of 107th Avenue and turned  
14 around when I saw the detectives' car completing a  
15 U-turn and parking.

16 The two detectives got out of the parked car  
17 and into the store. A few minutes later, the two  
18 detectives immediately came back out the store,  
19 running, jumped in their car, picked up their  
20 radio and called somewhere, I don't know.

21 I then decided to leave the area, so I  
22 started walking towards something-Boulevard,  
23 attempting to go to another bar to see if I could  
24 find someone who could buy the coat. I was looking  
25



1  
2 for someone to pawn the coat to.

3 A few minutes after leaving the corner of  
4 107th Avenue and 150th Street, I realized I was being  
5 followed by that same car that I saw pass the grocery  
6 store, which I presume to have been a detectives'  
7 car. The car followed me at a walking pace for  
8 approximately -- the car followed me at a walking  
9 pace down Something-Boulevard.

10 I then stopped in a bar and spoke to a friend  
11 there. When the car made a U-turn, I then left the  
12 bar and the car continued following me down to  
13 South Road, down South Road to 150th Street and down  
14 150th Street, again at a walking pace.

15 When I got near a pool room, which is on  
16 150th Street and South Road, the two officers then  
17 jumped out of the slow-moving car with their pistols  
18 out, ordering me to halt, I didn't -- identified  
19 themselves as police officers.

20 I then stopped, turned around with my hands  
21 apart and leaned against a building. The two  
22 officers approached me, one putting a pistol to my  
23 temple, another putting a pistol to my back.

24 Officer A, which was the officer which had the  
25 pistol in my back, then informed me --

1  
2 BY MR. LOPEZ:

3 Q Excuse me.

4 When you say, "Officer A," are you telling us  
5 you don't know their names?

6 A I don't know their names.

7 Q You are referring to them as Officer A or  
8 Officer B?

9 THE COURT: Wait a minute. Were these New York  
10 City police officers?

11 THE WITNESS: New York detectives, I believe.

12 THE COURT: Were they in uniform?

13 THE WITNESS: No, in plain clothes.

14 THE COURT: You are sure they were New York City  
15 police officers and not FBI agents?

16 THE WITNESS: They were not FBI agents.

17 THE COURT: Did they identify themselves to  
18 you?

19 THE WITNESS: Yes, sir. They claim to be  
20 detectives from the robbery squad, I think 103rd  
21 Precinct, or the 112th, I don't know for sure.

22 THE COURT: They didn't give you any shield  
23 numbers or anything of that nature?

24 THE WITNESS: No, sir.

25 THE COURT: Officer A said what?



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Bastian-direct

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2 THE WITNESS: Then Officer A informed me that  
3 it was a good thing that I didn't do anything foolish  
4 because they didn't have anything on me yet.

5 Then Officer B, while searching my belongings,  
6 asked me, did I use any drugs, then I informed  
7 Officer B that I did. He requested to know what kind,  
8 I told Officer B heroin.

9 Officer B then asked me, when was my last  
10 injection, which I informed him, about 9:45 the day  
11 before, 9:45 p.m., the day before.

12 Then the questioning started, coming from both  
13 officers. I don't recollect what order or which  
14 officer asked them, however, I do recollect some  
15 of the questions, and I'll put them in the best order  
16 I can.

17 Question: Who was the fellow you were talking  
18 to in the store?

19 Answer: A friend.

20 Question: What was his name?

21 Answer: Larry.

22 Question: Larry who?

23 Answer: I don't know.

24 Question: How long have you known him?

25 Answer: A couple of months.

13a

Bastian-direct

17

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2  
3 Question: Do you know of him carrying any  
larger sums of money?

4 Answer: No.

5 Have you heard of him doing any big jobs  
6 laterly?

7 Answer: No.

8 What is his girlfriend's name?

9 Answer: I don't know.

10 Where does he hang out?

11 I don't know.

12 Where would you go if you wanted to find him?

13 I don't know.

14 These are not in the exact order they came  
15 to me, but these are specifically the questions that  
16 were confronted to me.

17 Does he carry a gun?

18 I don't know.

19 Does he use drugs?

20 I did inform them that he did, because I  
21 know Larry, being a narcotics user, so the questions  
22 however revolved around that, and then Officer A  
23 asked Officer B, what did he think he should do  
24 with me.

25 Officer B said he didn't know and then Officer



14a

Bastian-direct

18

Excuse me, let me correct that.

Officer B then asked Officer A, what did he want to do with me, and then Officer A told Officer B to do what he wanted to do, it was his case, something like that.

Then Officer B asked me if he showed me some pictures of Larry, would I identify him. I then informed Officer B, maybe, not giving him a definite decision. I said maybe.

Then Officer B placed a pair of handcuffs on my hands and then escorted me to a car, informing me that I was not under arrest. I was just being taken in for questioning. I am being held under surveillance.

Then Officer B got in the car, leaving Officer A at the place of pickup, which was about a block away from the store, or where they originally saw me.

Officer B then circled the block.

THE COURT: Were you in the car with him?

THE WITNESS: Yes, sir.

THE COURT: You were handcuffed?

THE WITNESS: I was in the car, handcuffed.

THE COURT: You circled the block?

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Bastian-direct

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1  
2 THE WITNESS: Circled the block, was heading back  
3 towards the store, and while in the car, Officer B  
4 informed me that if I hadn't tried to avoid them,  
5 this would have never happened.

6 I then asked Officer B, what did he mean by  
7 trying to avoid them; and Officer B asked me, why  
8 did I leave the store. I then informed Officer B,  
9 because I had already informed him earlier, that I  
10 was a drug addict, I told him, Officer B, I am a  
11 drug addict, being a drug addict you learn to  
12 distinguish police from ordinary people and the  
13 presence of police make any drug addict uncomfortable  
14 when they are in a present area.

15 Then Officer B looked at me and laughed and  
16 told me, well, that's all they needed to pick me up.  
17 Then we were on the opposite side of the delicatessen  
18 when Officer B stopped the car and he asked me, was  
19 there a backway out of the store? I told him I  
20 didn't know.

21 Officer B then got out of the car, looked  
22 towards the back of the store, got back in the car  
23 and then circled the block to go back to the delica-  
24 tessen on 150th Street and 107th Avenue.

25 When we got there, Larry had already been



16a

Bastian-direct

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1  
2 apprehended by some police officials who were following  
3 up behind Officers A and B, and Officer A was there  
4 on the scene.

5 Officer A then pulled Larry in the same car  
6 that I was in, and Officer A then got in the car  
7 and we were brought to, I believe, to the 112th  
8 Precinct in the District of Queens.

9 At the 112th Precinct, we were brought upstairs  
10 to what I believe to be the detectives' office.  
11 Officer B then informed me to sit at a desk over in  
12 the far corner of the office. Officer A then told  
13 Larry to sit by a desk, very near to where we were  
14 standing.

15 Then Officer A immediately went over to  
16 Larry and started questioning him. Officer E roamed  
17 around the office area, laughing and jdding with  
18 other officials on the job, totally ignoring me.

19 About a half-hour later, Officer B then left  
20 the office. In the meantime, nobody had told me  
21 what I'm even here for, other than they suspect  
22 Larry and they wanted me to identify pictures, and  
23 that was before we were brought to the precinct.

24 Officer B, he left the office and didn't  
25 return until about 20 minutes later. When Officer B

17a

Bastian-direct

22

1  
2 towel and told me to wipe my face.

3  
4 Then Officer B sat down by the desk before me  
5 and asked me, did I know what I was here for. I then  
6 asked Officer B, I did not.

7 Then Officer B informed me that Larry is  
8 believed to have been involved in several bank  
9 robberies in the area, and that his buddy -- and  
10 that his partner thinks that I might know something  
11 about it. Therefore, they were holding me for question-  
12 ing, and if I would cooperate, I would be out in  
13 another half-hour or so.

14 (continued on following page)  
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1  
2 and showed me the pictures and asked me to identify  
3 Larry, which was one of the first pictures he showed  
4 me of Larry. I then informed Officer B that that was  
5 him. I had no other choice at that time, and he showed  
6 me some other pictures. He asked me who else did I  
7 know in the pictures. I believe I implicated a fellow  
8 named Horace. I did not know his last name at that  
9 time, and the other ones I did not implicate but I  
10 did state that I know them by their parents in the  
11 neighborhood and I gave them information leading to  
12 where they might be or where they might find them,  
13 and what I knew about them and their character and so  
14 forth and so on. Then Officer B took the photos back  
15 out the cell. I then got up, walked to the bars of  
16 the cell and Officer B went over to Officer A and  
17 informed him of the information that he got from me.  
18 Officer B got through telling Officer A about the  
19 information he had got from me. Officer A then told  
20 Officer B to look in the files and pull the file on  
21 that Rockaway job. Officer B then went over to the  
22 file, pulled the file on Rockaway job and brought  
23 them back over to Officer A. Officer A then told  
24 Officer B to see what he knows about this particular  
25 bankrobbery, to see what he knows about this job.

1 this information and I still didn't get cut loose and  
2 I was still ill. Officer B then came over to the cell  
3 pretending to be sympathizing how I felt and telling  
4 me that he couldn't help it, his buddies think I know  
5 more about the other robberies. Then I asked  
6 Officer B, what are they going to do about getting me  
7 some medication. Officer B then informed me they have  
8 no means of giving me any medication until the  
9 federal agents get here. Then he left me there. He  
10 went off for a moment. I was laying for awhile. Then  
11 Officer B came back pretending to be concerned about  
12 how I was feeling, again he asked me how was I. I  
13 told him that I was feeling bad. Then he told me that  
14 the federal agent will be here soon, all I have to do  
15 was tell them what I told them and cooperate with  
16 them and he was sure the federal agents would have  
17 been very nice if I cooperated. Let them know who I  
18 knew, what I knew about the picture and so forth, and  
19 he said they would probably turn -- let me go if I  
20 was cooperating with them. Then he said, are you  
21 sure you don't know anything about the Rockaway job?

22 I then informed him, no. He says, well they  
23 are going to keep you here all night anyway because  
24 they are going to want to know about that. Then he  
25



1  
2 told me that he sympathized with how I felt but if I  
3 were smart my best bet was to cooperate and give them  
4 anything they want to know until I appeared in court,  
5 then straightened it out. Otherwise, you will be here  
6 all night, and I just laid there, but Officer B was  
7 telling me he sympathized with how I felt but he told  
8 me to forget my pride, I'm ill and I need medication  
9 and there is nothing that they can do if I would  
10 speak to the federal agents and give him the  
11 information he wants to know that they will get me  
12 medication. I didn't say anything to Officer B.  
13 Approximately a quarter to eight or about ten minutes  
14 to eight, I believe the federal agent came there.  
15 I was then introduced to Danny Coulson, addressed  
16 himself to me as a federal investigator for the  
17 Bureau of Investigations and we went into a small room  
18 where Officer B was present. I sat down at a desk in  
19 a stooped position, wiping the smut -- wiping my face  
20 and Danny O. Coulson then informed me, he said  
21 Mr. Bastian, "I am informed by Officer B that you are  
22 willing to cooperate."

23 I did not tell Officer B that I was willing to  
24 cooperate. However, I looked up at Officer B and  
25 Officer B was sitting behind Danny O. Coulson leaning

9 1  
2 up against something and was telling me to go ahead,  
3 so I then told Danny O. Coulson that I would cooperate.  
4 Then Danny O. Coulson showed me some pictures, the  
5 same identical pictures that were shown to me by the  
6 detective of the particular robberies, and I gave  
7 Danny O. Coulson the information that I knew of these  
8 people; where to find the other people and whatever  
9 information I had gave the police. Danny O. Coulson  
10 asked me -- then Danny O. Coulson asked me, what did I  
11 know about the bankrobbery on Rockaway Boulevard.  
12 I told Danny O. Coulson I didn't know anything. Then  
13 Danny O'Coulson told me that Officer B informed him  
14 that I would cooperate on the Rockaway bankrobbery.  
15 I then looked at Officer B again and Officer B told  
16 me to go ahead. Then I told Danny O'Coulson that I did  
17 it, in them words and then Danny O'Coulson asked me,  
18 "Are you willing to sign a statement?"

19 I told him "Yes."

20 Then Danny O'Coulson asked me what part did I  
21 take in the bankrobbery. At that time I knew nothing  
22 of what was happening in a bankrobbery or anything.  
23 However, I attempted to make up a story which I was  
24 corrected by Danny O'Coulson, by telling me I was a  
25 liar. I couldn't have did this or I couldn't have did



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31a

that. I don't fit the descriptin of the person near  
the teller's booth or so forth.

(continued next page)

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BY MR. LOPEZ:

Q What story did you tell the special agent?

A The special -- first story I told Coulson was that I entered the bank, not involving anyone else, no one particular. I told him that I entered the bank alone, approached the bank teller, showed her a pistol and told her it was a stickup, and told her to put some money in a bag.

He then told me that that was not what I did, it was three people involved in the bank robbery; no one approached the teller with a pistol, and then I gave in -- he then started telling me what took place in the bank robbery, and then I just said, You're right, and okayed it, and so forth.

THE COURT: Wait a minute.

What did O'Coulson say happened?

THE WITNESS: I don't recollect what O'Coulson said, other than him telling me -- he told -- I don't know what gave him this assumption, but he told me that I couldn't have been the one that climbed up on a glass of the bank teller's thing and he told me that I had to be the one who approached the manager with the pistol. I then said, "Yes, I did." Then he was writing while he was



1  
2 telling me what was going on, and then he told me,  
3 "And you also took the pistol from the guard,  
4 right?"

5 I said, "Yes." And the statement was written out,  
6 pertaining to that.

7 I don't think there was any other questions,  
8 other than that, other than me telling him the story  
9 of how -- the made-up story, because I had no story  
10 to tell him of the bank robbery. Besides that, and  
11 him telling me what happened and what position I had  
12 in the bank robbery, there was nothing other than  
13 that said.

14 After I was told what I did, Danny O'Counslon  
15 then was writing the statement and he told me to  
16 sign it.

17 THE COURT: Did he tell you who the other two  
18 people were who were with you on that day?

19 THE WITNESS: He described -- I do remember --  
20 he described -- he asked me, did Larry have anything  
21 to do with it? I told him I don't know. I told him  
22 I didn't go in there with anybody. I continued to  
23 try and tell him that. He told me, "No." I said,  
24 "Yes, he went in there with me." Then Larry --  
25 that's when he got Larry's name, I don't know where

1  
2 he was. I just told him, he went in with me. He  
3 told me, who was the other guy. I told him I didn't  
4 know the other guy's name, it was just somebody that  
5 just came with us, and then the statement was  
6 written out.

7 He showed me the statement, I didn't read it.  
8 I didn't sign it, and I do believe after I signed it,  
9 he read it to me.

10 I shook my head and said, "Okay." After that,  
11 Danny O'Coulson went out and I believe he went to  
12 speak to Larry and I don't know what went on from  
13 there, other than him staying with Larry for awhile  
14 and then coming back and handcuffing me and taking  
15 me down to the Federal Bureau of Investigation's  
16 and fingerprinting me. I still didn't get any  
17 medication and the only reason I gave -- I submitted  
18 to whatever was going on, was on the assumption that  
19 Officer B told me that they would take care of me  
20 and I was too ill to refuse anything, anyhow.

21 I knew if I didn't do that, Officer B  
22 informed me they could keep me for 72 hours, and at  
23 that time I needed medication and I still didn't get  
24 any medication until the next morning, and I  
25 couldn't come to court that next morning, either,



1  
2 MS. O'BRIEN: Three-page document.

3 THE CLERK: Three-page document marked as  
4 Government's Exhibit 1 for identification.

5 (So marked)

6 THE COURT: You want to offer it in evidence?

7 MR. LOPEZ: Yes, for the purpose of the  
8 hearing.

9 (Somarked)

10 DIRECT EXAMINATION

11 BY MR. LOPEZ: (continued)

12 Q Now, Mr. Bastian, I show you Government's  
13 Exhibit 1 and I ask you if your signature appears on the  
14 line where it's printed, signed?

15 A Yes, sir.

16 Q That is your signature; is that correct?

17 A Yes.

18 Q Do you recall on January 9th, 1974, at  
19 around 9:30 p.m., having read this statement or this  
20 statement having been read to you, the printed matter I am  
21 talking about?

22 A Do I remember reading it?

23 Q Do you recall reading it or it being read  
24 to you?

25 A No, I don't.

1  
2 A Yes, sir.

3 Q And that was the cause of your narcotics  
4 addition?

5 A Yes, sir.

6 Q When was the last time prior to your detention  
7 on January 9th, 1974, by local police officers, that you  
8 actually took drugs?

9 A Around 9:45 to ten o'clock on January 8th.

10 Q What kind of drugs did you take at that  
11 time?

12 A Heroin.

13 Q Am or P.m.?

14 A P.m.

15 Q And how did you take it?

16 A Injection.

17 Q And on January 9th, did you have any drugs or  
18 any heroin?

19 A No, nothing.

20 Q During that period, January 8th, January 7th,  
21 around that time, how many bags a day did you require for  
22 your habit?

23 A About 16 bags a day, four bags each injection.

24 THE COURT: Four bags, each injection; 16 bags  
25 a day?



IG:jk 1  
2AM R1

Bastian-cross

48

2 CROSS-EXAMINATION

3 BY MS. O'BRIEN:

4 Q Mr. Bastian, now what time did you say the  
5 federal agent, Danny Coulson - what time did he get there?

6 A Where?

7 Q At the precinct. What time were you introduced  
8 to Danny Coulson?

9 A He got there approximately about a quarter to  
10 eight or ten to eight.

11 Q At that time did you ever tell Agent Coulson or  
12 anybody else present in the room at that time that you were  
13 suffering from withdrawal symptoms?

14 A At that specific time?

15 Q Yes.

16 A No, ma'am.

17 Q At any time thereafter did you tell Agent  
18 Coulson or any other agent of the Federal Bureau of  
19 Investigation that you were suffering from withdrawal  
20 symptoms?

21 A No, ma'am. Officer B did.

22 Q In your presence, this officer B told Agent  
23 Coulson that you were suffering from withdrawal symptoms?

24 A Yes.

25 Q Did Mr. Coulson give any response to that?

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A Correct.

MRS. O'BRIEN: No further questions.

MR. LOPEZ: I have a few questions.

REDIRECT EXAMINATION

BY MR. LOPEZ:

Q Mr. Bastian, are you telling us that there was a promise made to you that once Agent Coulson finished with his examination, your examination, that you were to receive some type of treatment that would alleviate your condition?

A Definitely. Not a direct promise but a promise thrown in the air.

Q Did you believe that promise?

A Yes, sir.

Q Are you telling us that you were prepared to sign anything and give any story whatsoever so you could bring the examination to a close and receive that treatment?

A That was my intention.

MR. LOPEZ: Nothir further.

THE COURT: Is someone going to offer the Exhibit marked for identification?

MRS. O'BRIEN: I was going to, with the agent --

MR. LOPEZ: We can offer it now.

I join with the Government in offering it, your Honor, and I would also offer -- they don't have to be



1

2

pick up Fritz Bastian?

3

A No, sir.

4

Q Was the name Fritz Bastian familiar to you prior

5

to January 9?

6

A No.

7

Q Was January 9, 1974 the first time that Fritz

8

Bastian came into the bank robbery with relation to the

9

Bank of North America?

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A Yes.

11

Q There came a time, Agent Coulson, that you

12

received a call from state authorities?

13

A New York City authorities.

14

(Continued on next page.)

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3/a

Coulson - direct

73

SS:GA  
T3R1 AM

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Q And did you advise His Honor who was the person  
that called you, who communicated with you?

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A I am not exactly sure who called, sir. It was  
either of two. I don't know exactly who called. It was either  
Detective Green, or, I believe, his supervisor, Sergeant Connell.

7

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Q Have you ever spoken with these officers before?  
in connection with this bank robbery?

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A Yes, sir.

Q Had the name Fritz Bastian been discussed with  
it?

A No, sir, not that I recall.

Q You do recall, however, that on January 9, 1974,  
you did receive a call from one of these officers; isn't that  
right?

A Yes.

Q And was it by phone, or was it in person?

A No, it was a telephone call to the office.

Q Can you tell His Honor what the telephone call  
was about?

A Yes, sir.

Briefly, we received a message that they had  
picked up two individuals, that they had received information  
on, that they had been involved in a bank robbery, this par-  
ticular bank robbery, and that they were at the 112th Precinct



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Q Do you know the names of these two people?

A Yes, sir.

Q May we have them?

A Fritz Bastian and the other individual at that time was known as Larry Jefferson.

Q Later you found out that his name was Larry Coates is that correct?

A Yes.

Q At the time, you knew it as Larry Jefferson; is that right?

A Yes, sir.

Q Did they tell you the nature of their information which led them to suspect that Larry Coates and Fritz Bastian were involved in the bank robbery of December 12, 1973?

A They did.

Q What was that?

A A confidential informant.

Q Did they tell you on the basis of confidential Informant they had detained Fritz Bastian and Larry Coates?

A Partly.

Q Did they give you the name of the confidential informant?

A Not at that time.

Q Did they subsequently give you the name of the

A. Yes.

Q What was his condition?

A Normal.

Q Did you notice if he was contorting in any way?

A I noticed that he was not.

Q Did you notice if he was bending over?

A (No response)

**Q Crouching?**

A            No, he was not.

Q Did you notice if he had any cramps of any kind,  
any indication of cramps?

A He gave no indication, sir.

Q Did you notice if he was perspiring, his eyes watering, running?

A            Definitely not.

Q Did any of the officers at the 112th Precinct indicate to you he was suffering from withdrawal pains?

A            No, sir.

Q Did you ask any of the officers at the 112th Precinct if Fritz Bastian had made any statements to them involving himself in the bank robbery?

**A** Yes.

Q And what was their reply?



1  
2 I gave him the form, and I said, "Would you read  
3 it to me?" He read it to me out loud. I said, "Do you under-  
4 stand?" He said he did.

5 Q Did you tell him he was a suspect in the bank  
6 robbery?

7 A Yes.

8 Q As a result of that, did you begin questioning  
9 him with regard to the bank robbery itself?

10 A I asked him -- Well, I should relate the events  
11 for clarity.

12 Q Fine.

13 A I asked him if he understood his rights. He said  
14 he did. I said, "Do you want to talk to me about it?" He said  
15 "Yes, I do." "Do you want to sign the form?" He said he did.  
16 He signed it.

17 Then I said, "Do you want to talk about it?" He  
18 said, "Yes, I'll tell you about it." Then, at this point, we  
19 proceeded -- He proceeded to tell me about the robbery.

20 Q At any time, did he appear sweaty?

21 A No.

22 Q Did he appear to be conspiring in any way?

23 A No.

24 Q Were his eyes watering?

25 A No, they were not.

1 Special Agent?

2 A I beg your pardon.

3 Q How long have you been employed as a Special  
4 Agent?

5 A Thirteen years.

6 Q Were you so employed on January 9, 1974?

7 A Yes, I was.

8 Q And on that date, in the course of your  
9 employment, did you have occasion to participate in an  
10 interview with an individual known as Fritz Emanuel Bastian?

11 A Yes.

12 Q Could you please state the circumstances of  
13 your interview with Mr. Bastian?

14 A Mr. Bastian had been arrested on a charge of  
15 bank robbery, and he was being questioned concerning that  
16 particular bank robbery.

17 Q Well, did you yourself do the questioning of  
18 Mr. Bastian or did another FBI agent?

19 A Another agent questioned him.

20 Q And were you present when the FBI agent gave  
21 him his Constitutional warnings, did you hear any warnings  
22 read?

23 A I did not hear them, no.

24 Q Did you ever hear the defendant make any  
25 statement to that Agent concerning his participation in the



EK:GA

T1R2 PM2

McCartin - cross/Lopez

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Q Did you see what was removed from Bastian at the time?

A I recall a torn dollar bill, which was removed from a hatband.

Q Do you know whether there was one or more than one dollar bill?

A I can't recall.

Q You said that it was removed from a hatband?

A That is to the best of my recollection, it was removed from a hatband.

Q To the best of your recollection, was that removed by one of the Agents, yourself, or by one of the Police Officers, or was it removed voluntarily by Bastian?

A I can't say whether it was removed or voluntarily turned over.

Q But when it was taken or received from the person of Bastian, you were present; is that correct?

A Yes.

Q Is that correct, sir?

A Yes.

Q And, Agent, when Bastian turned over these half dozen bills, was there any conversation between anyone, between Bastian and Agent Coulson or yourself?

A Yes, there was.

1 2 McCartin - cross/Lopez

2 Q What was thtt conversation, sir?

3 A To the best of my recollection, it was a conversa-  
4 tion to the effect that this was the odd dollar from the robbery,  
5 and it had been turned over and distributed among the partici-  
6 pants.

7 Q You made no notes as far as this inquiry was  
8 concerned; am I correct?

9 A I myself did not.

10 Q Agent Coulson was carrying the case?

11 A That is correct.

12 Q Now, did there come a time during the course of  
13 your processing that you took photographs of Bastian?

14 A Yes.

15 Q And did you have occasion to look at those photo-  
16 graphs?

17 A Yes, I have seen them since they were taken.

18 Q These photographs were taken right during this  
19 period of time, in New York City, during the time that you were  
20 completing the interrogation of Bastian, and you brought him  
21 over to FBI headquarters; is that correct?

22 A They were taken at the FBI headquarters.

23 MR. LOPEZ: Do we have those photographs, your  
24 Honor?

25 May we inquire from the Government if they have



1 4 Coulson - cross

2 question him. I didn't hear any complete conversation, except  
3 to be present for a very, very brief period during that time.

4 Q Did you hear any of your fellow officers inform  
5 you that Mr. Coates had confessed to that bank robbery at the  
6 National Bank of North America?

7 A Yes.

8 Q Did you hear Mr. Coates mention Mr. Bastian's  
9 name?

10 A Yes.

11 Q Can you tell us, when was the first time that  
12 night that you went to speak with Mr. Bastian?

13 A When I had him removed from the detention cell.

14 Q Approximately what time of night was that?

15 A May I refer to my log?

16 Q I'll hand this witness Defendant's Exhibit A in  
17 evidence.

18 A It was at 9:30.

19 Q And up until that time, at 9:30, when you went  
20 to speak with Mr. Bastian, did you ever observe any Police  
21 Officer, FBI Agent, talking with Mr. Bastian in that cell?

22 A No, I do not. The first I saw anybody contact  
23 him was when I asked him to be removed from the cell.

24 MISS O'BRIEN: May I have Government's Exhibit  
25 number 1, the Advice of Rights statement?

1 11 Coulson - cross

2 A He did not know the complete names of the other  
3 two individuals, or did not recall them at that time.

4 Q Reading from page 3 again: "Larry Jefferson  
5 stood guard in front of the tellers' cage and walked around  
6 with a hand gun. Then the other individual named Larry was  
7 armed with a hand gun, and got up to the tellers' counter."

8 Did he use those words?

9 A Does the statement say "up to" or "up on"?

10 Q Did he go on the tellers' counter?

11 A That's what he said.

12 Q Did you ever inform him that this was a fact  
13 that occurred in the bank robbery prior to his making that  
14 statement?

15 A No.

16 Q "And the four of us split up the money taken from  
17 the robbery, again I received about \$3,000."

18 A That's what he said.

19 Q These are his statements?

20 A Yes, ma'am.

21 Q Can you please tell us what time Mr. Bastian  
22 agreed with you to have these statements reduced to writing,  
23 if you know?

24 A It was shortly after 9:40, I would say, once the  
25 interview began, once he was advised of his rights, advised



1 12 Coulson - cross

2 that he understood them, and once he agreed to the interview,  
3 I would say, not more than a couple of minutes. We got --  
4 not deeply into the interview at all, when I asked him if we  
5 could do it in the form of a signed statement.

6 Q You testified that you observed him signing the  
7 last page here: "I have read this three-page statement, and  
8 it's true and correct."

9 A That's right.

10 Q Did you ask him to write out that whole state-  
11 ment?

12 A Yes.

13 Q Did he object to writing out that statement?

14 A No.

15 Q And also on page 2, did you observe him signing  
16 the name of Fritz Bastian on the bottom of that page?

17 A Yes.

18 Q How long did it take you before you had complete  
19 the written portion of that statement, and then he had signed  
20 it?

21 A Well, my log says that we completed the inter-  
22 view at 10:09 P.M., maybe it began at 9:40.

23 Q Was the interview completed at 10:09?

24 A Completely. I said nothing else concerning the  
25 robbery.

1 Coulson-cross

2 one?

3 MS. O'BRIEN: Maybe A, B and C.

4 THE CLERK: I'll make it three A, three B,  
5 three C, three D and three E.

6 THE COURT: 3A through 3E for identification.

7 THE CLERK: 3A through E for identification.

8 (So marked.)

9 Q While we are waiting to have the photographs  
10 marked, Agent Coulson, did you, at any time during the  
11 interview with Mr. Bastian, promise him that if he  
12 cooperated, he would receive some sort of medication for  
13 his habit?

14 A No, I didn't have any indication that he  
15 needed any medication. I made no promise to him at all.

16 Q Did you ever make any statement to him  
17 concerning any medication that he might receive at some  
18 treatment facility?

19 A No.

20 Q You made no statement to that effect at all?

21 A No.

22 Q I'm going to show you what has been marked  
23 as Government's exhibit 3A through 3E and ask you if you  
24 can identify these photographs for us.

25 A Yes, I can. They are a group of photographs



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Coulson-cross

I showed to Mr. Silberman and Mrs. Davis at the bank.

Q Can you please tell us the date that you showed it -- first of all, to Mr. Silberman?

A All on the same day, 4/19/1974. Mr. Silberman and Mrs. Davis, on April 19, 1974.

Q Is it Miss Davis or Miss Jones?

A May I refer to my 302?

Q Yes.

A I'm sorry, it's Ethel Jones and Leonard Silberman.

Q In what order did you first show them to Mr. Silberman?

A The pictures are numbered on the back, I laid them out 1, 2, 3, 4, 5, 6, across.

Q So, 3 across in two rows?

A Just exactly -- just exactly like this (indicating.)

Q And you previously had them numbered in the way you have them numbered?

A Before I went in the bank.

Q Did you make any statement to Mr. Silberman before you showed him these photographs?

A Yes.

Q What did you say to him?

Coulson-cross

A I went to see Mr. Silberman in his office, I identified myself, I said I would like to speak to him in a private room.

We went to a room off of his office, it was like a lounge or a coffee room. We were alone except for another agent, Agent Gary DeLaura.

I said, I have a group of photographs I would like to show you concerning the individuals who robbed the bank on December 12th.

I said, "The photograph of the individuals who robbed the bank may or may not be in here."

I said, "Look at these 6 photographs, and see if you recognize anybody in them."

I laid them out just as you see here.

THE COURT: We'll have to make it clear for the record. One is on your upper left hand corner and they go from left to right.

THE WITNESS: 1, 2, 3 and left to right.

THE COURT: On the bottom 4, 5, and 6.

Q Was Mr. Silberman able to identify anyone from those photographs as being the bank robber on December 12th?

A Yes.

Q Please tell us what number?



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Coulson-cross

A He selected number 4, Mr. Bastian.

MS. O'BRIEN: Your Honor, that is Government's exhibit 3 in evidence.

Now, at the time you showed him these photographs, did you allow him to look in the back of these photographs?

THE WITNESS: I didn't allow him to touch them. I said, "Lay them on the table. Do not turn them over."

He looked and picked out this individual.

Q Identified number 4?

A Yes.

Q Did you sometime that day also interview Mrs. Ethel Jones?

A Yes.

Q Did you display the photographs in the same manner as they are displayed here to Mrs. Jones?

A Exactly the same way.

Q And again, what did you say to Mrs. Jones at the time that you had displayed these photographs?

A I directed her attention back to the day of the robbery. I said, "I have a group of photographs, one of the individuals who robbed the bank on that day may or may not be in here. I would like for you to look at the

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Coulson-cross

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photographs and tell me if you recognize anybody amongst  
this group of 6."

4

Q And was she able to give you identification?

5

A Yes.

6

Q And what photographs did Mrs. Jones select?

7

A Photograph of Mr. Bastian, number 4.

8

Q Government's exhibit 3.

9

A Yes.

10

Q Did you show Mrs. Jones any of the notations

11

on the back?

12

A No, she did not see anything on the back.

13

MS. O'BRIEN: I have no further questions,

14

your Honor.

15

THE COURT: Mr. Lopez.

16

REDIRECT EXAMINATION

17

BY MR. LOPEZ:

18

Q This bank robbery took place on December 12,

19

1973?

20

A Yes, sir.

21

Q And you came in to the case on what date?

22

A I was assigned the case on December 12, 1973.

23

Q At any time prior to January 9th, 1974, did

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you go down to the bank?

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A No.



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Coulson-redirect

Q And it's your information that as far as the other two were concerned, they could pick out no photograph or they could pick some other photograph?

A They picked out none. They said they couldn't make any identification.

Q They said they couldn't make any identification is that correct?

A Yes.

Q Now, you indicated that at one time, during the course of your questioning of Mr. Bastian at the police station, there was a time that you made an inquiry with regard to the fact whether he was feeling well or he had a narcotic problem?

A Always during the course of an interview, we ask whether they use drugs and I asked him this.

Q And what did he reply to this?

A He said I chip a little sometimes.

Q Did he express at that moment that he wasn't feeling well?

A No. He never said anything about feeling uneasy, unpleasant at all.

Q Do you know what "I chip a little" means?

A Yes. He is a minimal user of drugs, very occasionally, that they don't have a strong habit.

1  
2 Q Now, will you please state your occupation, sir?

3 A I am a detective for the New York City Police  
4 Department.

5 Q And how many years have you been employed by  
6 the New York City Police Department?

7 A Fourteen years.

8 Q And how long have you been a detective?

9 A I have been a detective about eight years.

10 Q All right.

11 Were you so employed on January 9, 1974?

12 A Yes, I was.

13 Q On that date, in the course of your employment,  
14 did you have occasion to interview an individual known as  
15 Fritz Emanuel Bastian?

16 A Well, yes, I did speak to him.

17 Q Did you pick Mr. Bastian up off the street, so  
18 to speak during that day?

19 A Yes, I did.

20 Q Can you tell us the circumstances of your  
21 apprehension of Mr. Bastian?

22 A Well, on January 9, I was in the Queens  
23 Burglary office which is in the 112th Precinct, on the second  
24 floor.

25 We received a telephone call at approximately, about



1  
2 three forty five P.M., from a confidential person, informant,  
3 giving us a description of two people that was wanted for  
4 bank robbery.

5 Approximately about, about four P.M., I left with two  
6 other fellow officers, and proceeded to the South Jamaica  
7 area.

8 We arrived in that area about four twenty to four thirty  
9 P.M.

10 Q Are you sure of the time as being four twenty  
11 to four thirty?

12 A Yes.

13 Q How do you know that it occurred at this time,  
14 four twenty to four thirty?

15 A Well, I was working the tour, the twelve to  
16 eight -- no, the eight to four tour.

17 THE COURT: This was four thirty in the  
18 afternoon?

19 THE WITNESS: Yes, since the message came in  
20 a quarter to four.

21 BY MISS O'BRIEN:

22 Q So you were aware that you were working past  
23 your tour of duty; is that right?

24 A Yes.

25 Q You are at least sure of that, it was past four

o'clock?

A Yes.

Q What occurred after that?

A We circled the area where we were told possibly where the two perpetrators would be.

THE COURT: Did the confidential informant tell you this?

THE WITNESS: In the area and a possible store.

A As we passed the store, we saw two people, the description that was given to us over the phone, and by the window of the store as we circled and came around, we saw both defendants out in the street, at the time, and it was close to 150th and South Road, one was proceeding south toward Jamaica Avenue, and the other one was proceeding -- I mean, I mean, north, towards Jamaica Avenue, and the other was proceeding back to the store.

I had my fellow workers get out of the car, I proceeded to drive up 150th Avenue, I cut my car off on the angle, I got out and detained the defendant in the purple shirt (indicating the defendant).

Q All right. Did you ask the defendant to get into the police car?

A Yes.

Q Did you handcuff the defendant?



1  
2 whom you picked up?

3 A What I recall, I think it was Colts (sic).

4 Q What happened after you picked up these two  
5 individuals?

6 A After we picked up these two individuals,  
7 we proceeded back to our office, which is the 112th Precinct  
8 in Forest Hills. We got there about, maybe, ten after five,  
9 around, a little bit after five, between five and five fifteen  
10 somewhere around there.

11 Q On the way to the precinct in the car, did  
12 Mr. Bastian ever inform you that he was suffering from  
13 withdrawal symptoms?

14 A No, he did not.

15 Q Did you have any conversation with Mr. Bastian  
16 at all, at that time?

17 A No, I might have said something --

18 Q Do you remember telling him he is a suspect?

19 A No, I don't recall.

20 Q Did you identify yourself?

21 A Yes, I did.

22 Q Did you tell him the crime about which he was  
23 a suspect, or did you mention a crime?

24 A I mentioned it to him.

25 Q But you don't know if you said he was a suspect

or not?

A No, no.

Q What occurred after you got to the precinct?

A Well, we got to the precinct, the defendant was put in a cell, we separated the two defendants, one was put in a cell, and one was put into an interview room, like.

O All right.

And where did you go, to the individual that was in the interview room, or did you go to the individual that was in the cell?

A Well, I don't -- I know he was placed in the cell.

Q When you say "he", whom do you mean?

A I am sorry, the defendant.

Q Mr. Bastian was placed in the cell; is that correct?

A Yes.

Q And Mr. Coates was placed in the interview room?

A Yes.

Q Where did you go?

A Well, I was in the general office, and we was going through the different files of bank robberies, and they had the cases.

Q When you say "we", whom are you referring to?



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A        Myself and fellow officers of the New York City Robbery Squad, the Queens Robbery Squad.

Q        Did you yourself initially place Mr. Bastian in this cell?

A        Possibly I did.

Q        After you placed him into the cell, did you ever go back to speak with Mr. Bastian that evening?

A        Later on, maybe about two hours later, two and a half hours later.

Q        Prior to going to speak to Mr. Bastian, before you spoke with him what were you doing?

A        Well, we was checking records, we was trying to call up complainants, for bank robberies.

Q        You mean witnesses?

A        Witnesses, and tried to get people for lineups, possibly.

Q        All right.

Did you speak with Mr. Coates on that occasion?

A        No, I don't think I did, I don't think I had too much conversation with Mr. Colts (sic).

Q        Now, during the time when you were going through the files and speaking to the complainants, etcetera, did you ever observe any other police officer go and speak to Mr. Bastian?

1  
2 Q Of the clothing, and on the basis of that you  
3 went to that specific area and you took into custody, Fritz  
4 Bastian; is that correct, sir?

5 A That is correct.

6 Q At that time, did you charge him with any  
7 specific crime?

8 A No, I did not.

9 Q Did you ever charge him with any local or State  
10 crime?

11 A No, I did not.

12 Q Did you arrest him for anything specific?

13 A No, I did not.

14 Q You were holding him merely as a witness or  
15 something?

16 A As a suspect.

17 Q As a suspect, but he wasn't being arrested; is  
18 that correct?

19 A No.

20 MISS O'BRIEN: Objection, your Honor.

21 I think it is a conclusion.

22 THE COURT: No.

23 BY MR. LOPEZ:

24 Q Did you put handcuffs him; is that correct?

25 A Yes.



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Q And you put him in a car?

A Yes.

Q And you gave him no other choice but to accompany you to the precinct, to the 112th?

A That is right.

Q When you got to the 112th Precinct, he hadn't been arrested or booked yet, you threw him into a pen, a bullpen; isn't that correct?

A Yes.

Q And then you started looking up all the robberies and you began calling up complainants to come down to view the defendant, and to see if they could connect him to a specific robbery?

MISS O'BRIEN: Objection.

MR. LOPEZ: I withdraw it.

A We checked a specific one that we were told about.

Q Which specific one were you told about?

A We were told that the robbery that was committed on Rockaway Boulevard, sometime, sometime in early December.

Q Was that the entire information given to you, a robbery on Rockaway Boulevard sometime in December?

A Well, the Rockaway Boulevard, well, in the vicinity -- well, as I know Queens I know where the bank was, they were talking about the Bank of North America.

1  
2 Q They had given you that specific bank, isn't  
3 that correct?

4 A Right.

5 Q Did you bring down the confidential informant  
6 to view secretly, Fritz Bastian?

7 A No.

8 Q And did you bring down any of the complainants  
9 or any of the people that were present at the bank to view  
10 Fritz Bastian?

11 A I didn't bring anybody down.

12 Q You merely held him for the Federal Bureau of  
13 Investigation; is that correct?

14 A That is correct.

15 Q Someone called the FBI and said, "We have picked  
16 up some suspects here, come down and interview them"; is that  
17 correct?

18 A If they were called, I don't know how they was  
19 called, I know they was notified.

20 Q The FBI did arrive; is that correct?

21 A That is correct.

22 Q Up until that time of the arrival of the FBI,  
23 as far as you were concerned, the defendant Bastian as yet,  
24 had not mentioned the fact that he had been one of the  
25 perpetrators of the robbery; is that correct?



1  
2 Q He described the clothes they were wearing on  
3 that particular day?

4 A At that time.

5 Q Did he tell you what bank robbery he was  
6 referring to?

7 A Yes, he said the bank robbery of the Bank of  
8 North America located on Rockaway Boulevard.

9 Q Did he give you the date of the bank robbery?

10 A No, he did not.

11 Q Did he give you any further additional infor-  
12 mation other than their clothes and where they would be?

13 A Their clothes and where the location was they  
14 were at.

15 Q What did you do as a result of that information?

16 A I then left the precinct out in Forest Hills  
17 with two brother officers and proceeded to the area.

18 We drove by the store, we saw these two guys,  
19 we looked into the store and I observed the two individuals  
20 in the store. They looked out in our direction as we  
21 passed the premises, the individual Fritz walked out the  
22 store and proceeded towards South Road and 150th Street, and  
23 as we circled the block we had seen the other individual  
24 exiting the rear of the premises onto Sutphin Boulevard.

25 We drove up to South Road and Sutphin

1  
2 Boulevard, I exited the vehicle at that time and my partner  
3 drove up to 150th Street and South Road and got in front of  
4 the defendant Fritz, and I was walking up in back of him by  
5 this time, in case he ran backwards we would have him in  
6 between us, and my partner stopped him and I got there and  
7 we put handcuffs on him and put him in the vehicle.

8 I came back to the store and went into the store.  
9 The other guy, Larry Coates, was in the rear of the store  
10 and I brought him out of the store.

11 Q Did you have Fritz Bastian in custody?

12 A Yes, I did.

13 Q You said you handcuffed him?

14 A That is correct.

15 Q And did you have any intention of releasing  
16 him at that point?

17 A No, I did not, no.

18 Q Did you ever have any intention of booking  
19 him?

20 A He was under arrest at that time.

21 Q All right.

22 Then what occurred after that?

23 A We then put both of them in the car and  
24 brought them back to the 112th Precinct which is located  
25 in Forest Hills, put the defendant Fritz in the cell and



1  
2 Q Did you ascertain from your own experience  
3 that he was an addict?

4 A You could look at his face and eyes and see he  
5 must have been, he must have used drugs.

6 Q And have you had experience with drug addicts  
7 in the past, dealing with drug addicts either as defendants  
8 or accomplices or something of that nature?

9 A I worked three years in narcotics.

10 Q And have you had familiarity with observing  
11 withdrawal symptoms?

12 A Yes, I have.

13 Q From addicts?

14 A Yes.

15 Q On the basis of your experience, was there any  
16 indication given to you by Mr. Bastian that he was suffering  
17 from withdrawal symptoms either in the car to the precinct  
18 or any time that night at the precinct?

19 A No, there was none.

20 Q Did you ever observe him eating a sandwich at  
21 that time?

22 A No, I didn't.

23 Q You didn't observe him, okay.

24 Did you ever observe him crouched in pain,  
25 perspiring with a running nose, anything of that nature?

Greene-direct

SS  
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BY MISS O'BRIEN:

Q Can you tell us if his information has led to any arrest?

A It led to at least four arrests.

Q At least four arrests?

A That is correct.

Q Would that be within a year prior to January 9, 1974?

A That is correct.

Q Can you tell us the nature of those arrests?

A Well two supermarket stick-up robberies and two bar robberies.

Q Okay, fine.

MISS O'BRIEN: Your Honor, I have no further questions of this witness.

If your Honor deems it significant for the purpose of this suppression hearing that the confidential informant name be revealed, then we have no objection to revealing it, but only in camera and in the absence of defense counsel, with a sealed record, and there might be some further information that the detectives will give to your Honor, but we will not reveal it in the presence of defense counsel.



2 Q During the course of 1973, more or less?

3 A That is correct.

4 Q Now, you indicated four arrests; is that correct?

5 A That is correct.

6 Q Now, of those four arrests, how many of those  
7 arrests resulted in convictions?

8 A Three that I know of.

9 Q Three, and the fourth you are unaware of or  
10 you don't know?

11 A It might still be pending.

12 Q It might still be pending?

13 All right, O.K.

14 Now this confidential informant, was he himself  
15 under indictment or under some accusation?

16 A No, he wasn't.

17 Q Was he cooperating on the basis of money being  
18 paid him?

19 A That is correct.

20 Q In other words, for every piece of information  
21 that he got, he would have gotten a certain amount of money;  
22 is that correct?

23 A That is correct.

24 Q And how much money would he get, for instance,  
25 how much money did he get for the Bastian arrest?

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Green-Cross

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custody or arrested by you and your brother officers to hold him strictly for the FBI, is that correct?

3

4

A That is correct.

5

6

Q Did anyone question Fritz Bastian during his stay at the 112th Precinct on January 9, 1974?

7

A I believe the FBI did.

8

9

10

11

Q Did any of the local officers in your precinct sit down and advise him of his Miranda rights, you or anyone in your precinct and begin to question him about the December 12th bank robbery of North America?

12

A Not to my knowledge.

13

14

15

Q Am I correct, then, in saying that you considered the bank robbery on December 12th, 1974 on Rockaway Boulevard a Federal crime?

16

A Federal and state crime.

17

18

19

20

21

22

Q Were you taking any police action at the precinct with regard to Mr. Bastian as a result of your arrest? You placed him under arrest, didn't book him for any charge, somebody called the FBI and nobody bothered questioning him. You just left him there, is that correct, until the FBI came?

23

A That's correct.

24

25

Q You weren't making any inquiries or any interrogations of Fritz Bastian, is that correct?



Silberman-Direct

A Yes. He was dressed rather peculiarly.

Q How was he dressed?

A He had a black hat on, slanted sideways and a three-quarter coat and looked rather tall. He stuck out amongst everybody else.

Q After he entered your section of the bank, how long did you look at his face at that time?

A Ten seconds, fifteen seconds. Just enough -- he had to walk across the platform.

Q Fifteen seconds as he approached you before he pulled the gun?

A Yes.

Q After he pulled the gun on you, how long did you look at his face?

A Maybe another five seconds or ten seconds. I can only guess at that. A few seconds.

Q I'm going to ask you if you can look around this courtroom and see if you can identify anyone in this courtroom as being that individual who pulled the gun on you on that occasion?

A Yes, I can.

Q Please point him out for us.

A The man sitting over there.

Q What color shirt?

Silberman-Direct

A Purple shirt.

MISS O'BRIEN: May the record identify he  
has identified the defendant.

THE WITNESS: Yes.

Q Do you remember receiving --

THE COURT: I have a case on at one o'clock  
and the attorneys have been waiting quite patiently.  
We'll suspend until two o'clock and resume the  
hearing -- until two-fifteen, rather. I have  
cases on at two.

(A recess was taken.)



EK:bd  
1/1 PM

1 Afternoon Session.

2 June 14, 1974.

3 3:00 P.M.

4 (At 3:00 PM the suppression hearing continued.)

5 THE COURT: Okay, let us go.

6 MISS O'BRIEN: Thank you.

7 Your Honor, before we start the hearing, may I  
8 ascertain if Mr. Lopez has spoken to Mr. Coates.

9 MR. LOPEZ: Yes, I have, your Honor.

10 I am satisfied. Mr. Coates has indicated that  
11 he does not wish to testify for the defense or for  
12 the Government in this case.

13 MISS O'BRIEN: That is the word that I had  
14 received from Mr. Coates this morning.

15 We did make him available to defense counsel.

16 MR. LOPEZ: Yes, I had occasion to speak with  
17 him and I have advised the defendant of that fact,  
18 and there is no way we can call upon him under those  
19 circumstances.

20 THE COURT: Where is the defendant?

21 MR. LOPEZ: The defendant is available to us,  
22 I will have the Marshal bring him out.

23 (The defendant Mr. Bastian was then ushered  
24 into the courtroom.)

25 THE COURT: Mr. Bastian, your counsel has

1 advised the Court just before your arrival that he  
2 has spoken to Mr. Coates and Mr. Coates does not wish  
3 to testify.

4 THE DEFENDANT BASTIAN: That is correct.

5 THE COURT: All right.

6 L E O N A R D S I L V E R M A N , having been  
7 previously sworn, continued to testify as follows:

8 DIRECT EXAMINATION

9 BY MISS O'BRIEN (continued):

10 Q Mr. Silverman, before lunch I believe that you  
11 were able, you said, to make an identification of the  
12 defendant Fritz Bastian as being the individual that  
13 participated in the bank robbery, and specifically that he  
14 was the individual that held the gun to your head; do you  
15 recall that testimony?

16 A Yes, I do.

17 Q All right.

18 Now, do you recall being visited by an FBI  
19 agent in April of 1974?

20 A Yes, I do.

21 Q Do you recall the date to be April 19th; do  
22 you not?

23 A I can't, I'm not able to remember the date,  
24 I don't know if it was the 19th.

25 Q On that occasion did an FBI agent show you a



Silverman-direct

3 2 spread of six photographs?

3 A Yes.

4 Q Did he in fact show you two spreads of photo-  
5 graphs?

6 A Yes, two different sets. I don't remember how  
7 many were in the second group, but there were six in one  
8 group.

9 Q Six in the first?

10 A And several in the other group.

11 Q I'm going to show you a series of photographs  
12 and ask you if these are the photographs that were presented  
13 to you?

14 I am going to ask you once again to look at  
15 these photographs and see if these are in fact the photo-  
16 graphs that were shown to you in April of this year.

17 A I believe they are the ones that were shown  
18 to me.

19 Q Now, on that occasion were you asked if you were  
20 able to identify any individual from the photographs?

21 A Yes, I was.

22 Q That is as being the individual that robbed the  
23 bank on that occasion?

24 A Yes.

25 Q Were they shown to you in the same way as they

Silverman-direct

are shown here?

Can you recall the order in which the photographs were shown?

A No, I can't recall the order, but it was similar, they were laid out like this (indicating on witness desk before witness).

Q And can you recall which photograph you selected as being the photograph of the assailant?

A This one (indicating).

Q You have indicated what has been marked as Government's Exhibit 3 in evidence.

I will turn over Government's Exhibit 3 and ask you if that is your signature that appears on the back of Government's Exhibit 3.

A Yes, it is.

Q And do you see the date, 4/19/74?

A Yes.

Q And does your initials appear on the back of each of the other photographs, each of these photographs in the spread, Government's Exhibit 3 through 3(e)?

A Well, my initials or my signature.

That is my signature.

Q Your signature or your initials?

A My signature or my initials, right.



5

Silverman-direct

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THE COURT: Do they appear on all of them?

3

4

Q Don't your signature or initials appear on all of them?

5

A Yes, it is.

6

7

Q Your recollection is today that on that occasion you selected Government's Exhibit 3 as being the assailant?

8

A Yes, it is.

9

10

Q Now, were these photographs ever shown to you again?

11

A No.

12

13

Q By either an agent of the Federal Bureau of Investigation or by myself or by myself or by anybody else at all?

14

15

A Not to my recollection.

16

Q Okay.

17

18

Did you participate in a line-up last week that was conducted in this building?

19

A Yes.

20

21

Q And I'm going to show you a photograph and ask if this photograph is a fair and accurate representation of the line-up as it appeared last week.

22

23

A Yes.

24

25

Q Now, on that occasion were you ever able to select anybody, anyone from the line-up?

Silverman-direct

7 the same physical characteristics as the assailant had at  
the date of the bank robbery?

A No, he does not

Q From your own memory of that assailant, how is  
he different?

A He is shorter at least two or three inches,  
shorter, and his hair is shaved, you know.

Q You were talking about him being shorter this  
morning, but you hadn't seen him stand up, did you?

A No, no, no.

Q You are talking now about the line-up?

A At the line-up he appeared -- the reasons why  
I didn't identify him at the line-up was because the face  
was the same but he was shorter and I wasn't positive  
because of the height factor, that was all, and that his  
hair was shaved, but the face, the face is the same.

Q Let us just go to the facial characteristics.

Just going to the face, how was the assailant  
on the date of the bank robbery different from this  
defendant as he appears today to you?

A Well, he had some -- he had more hair on the  
top of his head and naturally he is dressed differently.

Q How was his hair at the time of the robbery?

A It was Afro, close, I guess clipped, not full



Silverman-direct

but he had much more hair than he does now.

Q Was the assailant wearing glassas at the time of the robbery?

A No.

Q Did he have any hair on his face in the way or a moustache?

A The start of a little goatee.

Q And the defendant, of course, has no hair on his face, he has shorter hair and is wearing glasses?

A Yes.

Q Given all of these differences as he now appears, can you still identify this defendant as being the man that assailed you on December 12th?

A Yes, I can.

Q How can you?

A Well, from the expression of his face and from the characteristics of the face. The face itself is the same. You can't hide the characteristics of the face, you can hide the hair and -- and so forth and so on, but you can't hide the characteristics of the face.

Q On the day of the line-up, did you look at his face?

A Yes, I did, and the only reason I said I couldn't make positive identification was because of the

Silverman-direct

height.

Q What was the problem with the height?

A Well, he was three -- two or three inches shorter than what I expected him, you know, to be.

Q And on the day in question of the bank robbery, while you were lying on the floor, did you notice in fact the assailant to have platform shoes on?

A Yes, he did, but I didn't at the line-up, I didn't take that into consideration, which was my mistake.

MISS O'BRIEN: Your Honor, no further questions of Mr. Silverman.

(continued next page)

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1  
2 Q Okay. On that date, in the course of your employ  
3 ment, did anything unusual occur in that bank?

4 A There was a bank robbery?

5 Q All right.

6 Will you please tell us the circumstances of the  
7 robbery as you know them?

8 A Well, because I am the Head Teller, and was -- I  
9 was standing at my cage when Mr. Silberman came toward the back  
10 of the bank with the robber -- with the gun to his head. And I  
11 happened to look over.

12 Q If you may, speak a little louder.

13 A I happened to look over and saw the expression on  
14 his face, and I felt that there was something wrong. So then  
15 they hollered, "This is a holdup. Everybody."

16 Q All right.

17 The first time you noticed Mr. Silberman, did you  
18 -- You say you noticed that there was a gun being held on Mr.  
19 Silverman; is that correct?

20 A Yes.

21 Q Did you see the individual that was holding the  
22 gun on Mr. Silberman?

23 A Yes, I got a look at him.

24 Q All right. What is the next thing you observed?

25 A Well, the next thing, he told him -- he told him

1  
2 to lay on the floor. And he gave Miss Donavan a brown paper bag,  
3 and told her to fill it up with 100's, 50's. "Everybody lie down  
4 and be quiet. This is a holdup. This is a holdup."

5 Q All right. Did you look at the man's face at the  
6 time that he was telling you to lie down on the floor, and this  
7 is a holdup?

8 A Yes, I did.

9 Q What happened after that?

10 A Well, after I had to move back from my cage, be-  
11 cause there wasn't enough room for anyone to lay down. And as  
12 I stepped back, I glanced at him again, and I laid down on the  
13 floor.

14 Q Do you know approximately how long you were on  
15 the floor?

16 A Seems like a long time. But I imagine probably  
17 five, ten minutes.

18 Q All right.

19 What was happening? What did you hear, rather,  
20 while you were laying on the floor?

21 A Well, all I heard was, someone said, "Get the  
22 guard." And that was about all.

23 Q Okay.

24 THE COURT: Were you laying face down, or face up?

25 THE WITNESS: Laying with my head to the side,



1  
2 down to my stomach.

3 Q While you were on the floor, were you able to see  
4 anything?

5 A Well, the only thing I could see was the height,  
6 the shoes. That's about all. And before I laid down, I know  
7 it was a black -- big, black hat.

8 Q This is before you went down?

9 A Yes.

10 Q But while you were on the floor, you only noticed  
11 the shoes of the assailant?

12 A Right.

13 Q And what kind of shoes were they?

14 A I know they were high heels. But I don't remember  
15 their color, or anything like that. They were --

16 Q Platform shoes?

17 A Platform.

18 Q Would you use that characterization?

19 A Yes.

20 Q All right.

21 And when these five or ten minutes elapsed, did  
22 you then subsequently stand up?

23 A Yes.

24 Q Had the bank robbers left the bank at that time?

25 A Yes.

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Q Did you ever get a look at any of the robbers' face after the time you stood up?

A No.

Q All right.

Now, the very first time you saw Mr. Silberman, and you saw the assailant, did you get a look at the assailant's face, full face?

A Yes, I did.

Q How long did you look at his full face?

A Well, I would say from two, three seconds, four seconds.

Q Two to four seconds?

A Yes.

Q All right. And at the time that he instructed Mr. Silberman to get down on the floor, did you again look at his face on that occasion?

A Yes, I did.

Q All right. And the time he was telling her to put money in the bag, did you again look at his face?

A No.

Q All right. Now, in all, from the time you first saw him until the time that you went down on the floor, what is the total amount of time that you looked at the face of the bank robber?



1

2

A Yes.

3

Q All right. Will you please identify him for us?

4

A The fellow with the purple shirt on, white bowtie.

5

MISS O'BRIEN: Your Honor, may the record indicate

6

she identified the defendant?

7

THE COURT: Yes.

8

Q All right. Now, did there come a time in April

9

of this year when an FBI Agent came to you and asked you if you

10

could identify an individual from a spread of photographs?

11

A Yes.

12

Q All right. Do you remember if this was Agent

13

Coulson?

14

A I believe so. I really --

15

Q All right.

16

I am going to ask you to look at some photographs

17

which are Government's Exhibits 3 to 3-E, and ask you if you

18

can identify these photographs as being the photographs that

19

you saw on that date in question?

20

All right. Are these the photographs that were

21

shown to you by the FBI on that date?

22

A Yes.

23

Q Now, on that date, did you select any one of the

24

photographs as being the photograph of the bank robber that you

25

had seen behind Mr. Silberman?

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A Yes.

Q . Could you tell us which photographs you had identified?

All right.

MISS O'BRIEN: Let the record indicate she has identified Government Exhibit 3.

Q All right. Did you initial or sign each of these photographs?

A Yes, I did.

Q If you can recall -- All right.

Will you please take a look at the back of each photograph now and see if you can identify your initials or signature on each of these items?

A This is mine.

Q All right. Pointing to Government Exhibit 3-E, is your signature, 3-A is your signature, 3-B, your signature, 3-C, your initials, 3-E your initials, and 3-D your initials.

All right. Now, Mrs. Jones, did you not also view a lineup that was conducted here last Thursday in this very building? Were you a -- Were you a witness to a lineup?

A Yes, I was.

Q I am going to show you what has been marked Government's Exhibit 5, and ask you if this photograph is a fair and accurate representation of the lineup as you viewed it



1  
2 last Thursday?

3 A Yes.

4 Q All right. Now, on that occasion, were you able  
5 to identify any individual in this lineup as being the indivi-  
6 dual who had robbed that bank?

7 A Number Five.

8 Q All right. You identified --

9 THE COURT: I beg your pardon. You identified  
10 Number Five; is that correct?

11 THE WITNESS: Yes, I did.

12 Q That was Number Five you had identified.

13 THE COURT: May I see it?

14 MISS O'BRIEN: Yes.

15 Q Can you please tell us what your identification  
16 at the lineup now was based upon?

17 A Looking at his eyes and his complexion.

18 Q All right. His eyes and his complexion.

19 Do you remember giving a description of this  
20 assailant to the FBI Officers?

21 A Well, I remember I said he was tall and he had on  
22 a big, black hat.

23 Q Okay. This was some time shortly after the bank  
24 robbery; is that correct?

25 A Yes.

MISS O'BRIEN: For the record may we indicate there are no other witnesses except for Agent Coulson in the courtroom.

## DIRECT EXAMINATION

BY MISS O'BRIEN:

Q Would you please state your occupation?

A Assistant Manager, National Bank of North America.

Q Would you please give us the address of that bank?

A 152-80 Rockaway Boulevard.

Q Were you so employed on December 12, 1973?

A Yes, I was.

Q On that date, in the course of your employment, did anything unusual occur at that bank?

A Yes, we were held up.

Q Would you please state to us the circumstances of that bank robbery?

A Well, approximately a few minutes after 2:00 o'clock in the afternoon I buzzed in somebody to the platform who was holding some cards to open up an account. As he came in and approached me he pulled a gun and told me to put my hands up -- this is a holdup.

Q Would you please describe what that



1 individual looked like on that occasion?

2  
3 A He was wearing a black wide-rimmed hat and  
4 he was approximately 6'3", 6'4", 175 pounds, male Negro  
5 about 22 to 24 years old.

6 Q You said that he approached you, displayed  
7 to you a gun; is that correct?

8 A He pulled a gun.

9 Q Would you please describe the gun?

10 A It was a silver .45 automatic, I guess, with  
11 a little thing at the edge of it -- the barrel.

12 Q What occurred after he pulled the gun on you?

13 A He told me, "Get up, turn around and walk to  
14 the back." While he was doing that he put the gun to the  
15 back of my head and while I was walking to the back, through  
16 the platform -- toward the tellers' area -- he was  
17 clicking the safety on and off at the back of my head.

18 Q The safety of the gun?

19 A Yes, I believe it was the safety to the gun  
20 he was clicking it on and off.

21 When we approached the tellers' area he  
22 told me to lay down and then he turned towards the  
23 tellers and said, "This is a holdup. I want all your  
24 large money."

25 I believe he said, "50 and 100." I am not

8/a

Silberman-direct

312

1  
2 sure.

3 Q What else occurred after you heard that?

4 A While I was lying on the floor, I saw him  
5 walk around and then I heard somebody say, "Get the guard,"  
6 and it seemed like a few minutes later -- five or ten  
7 minutes -- I didn't hear any noise. I got up and I ran to  
8 the front of the platform and I through the front door saw  
9 three people running toward the vicinity of the Ramada Inn  
10 across our parking lot and I came back and locked the door  
11 and went through my normal procedure after the holdup.

12 Q I ask you to look around the courtroom and  
13 see if you can identify anyone in this courtroom as being  
14 the man that held a gun to your head on December 12th,  
15 during the course of the robbery.

16 A Yes, I can.

17 Q Would you please point him out.

18 A The man in the purple shirt.

19 MISS O'BRIEN: May the record indicate that  
20 he has identified the defendant?

21 THE COURT: Yes.

22 Q Now, did there come an occasion in April of  
23 this year when Agent Coulson for the Federal Bureau of  
24 Investigation came to you and asked that you look at some  
25 photographs?



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A Yes.

Q I am going to show you --

MR. LOPEZ: I will object now.

THE COURT: Your objection is overruled now,  
Mr. Lopez.

Q I am going to show you six photographs and I  
ask you if you can identify those six photographs -- look at  
each o-e of them -- lok at the back -- spread them out before  
you.

Q Were these the photographs shown to you by an  
FBI agent in April of this year?

A Yes.

Q Now, of those six photographs were you able  
to identify any one of them as being a photograph of the  
bank robber on December 12?

A Yes.

Q Could you please tell us which one you were  
able to identify?

MS. O'BRIEN: May the record indicate that  
she has identified Defendant's Exhibit B in evidence,  
the photograph of Fritz Bastian.

THE COURT: Yes.

Q All right. She has viewed Government's (sic)  
Exhibit B1 through 5.

1  
2 Q Did there come a time when you were asked to be a  
3 witness in a lineup in this building?

4 A Yes.

5 Q I am going to show you a photograph which is  
6 Defendant's Exhibit A and I ask you whether that photograph  
7 is a fair and accurate representation of the lineup as you  
8 viewed it on June 6?

9 A Yes.

10 Q On that occasion were you able to identify  
11 any one individual as being the assailant at the bank robbery?

12 A Yes.

13 Q Which one were you able to identify?

14 A No. 5.

15 THE COURT: I could barely hear that. Did every-  
16 one hear? All right.

17 Q Which number were you able to identify?

18 A No. 5.

19 Q No. 5 from Government's Exhibit in evidence.

20 I want you now to look around this courtroom and  
21 I am going to ask you if you are able to identify anyone in this  
22 courtroom as being the man who robbed the bank this December  
23 of last year?

24 A Yes, the gentleman with the white bowtie.

25 MS. O'BRIEN: May the record indicate that she  
has identified the defendant.



HS:GA  
T1R2 PM

Derrick - direct

L A R R Y D E R R I C K , having been first duly Sworn by  
the Clerk of the Court, testified as follows:

THE CLERK: State your full name.

THE WITNESS: Larry Derrick, D-e-r-r-i-c-k.

THE COURT: Keep your voice up so all the members  
of the jury may hear you.

Do you want to be seated, please.

DIRECT EXAMINATION

BY MISS O'BRIEN:

Q Would you state your name again, please?

A Larry Derrick.

Q Did you enter a plea of Guilty to Count One of  
this Indictment?

A Yes.

Q Do you know what you took a plea of Guilty to?  
What's the nature of the crime?

A Bank robbery.

Q Did you in fact commit a bank robbery?

A Yes.

Q And do you remember at that time if you were told  
by the Judge the maximum penalty?

A Yes.

Q That you were subjecting yourself to upon pleading  
Guilty to Bank Robbery?

1 2 Derrick - direct

2 A Yes.

3 Q What was that penalty?

4 A Twenty years sentence.

5 Q Maximum?

6 A Right.

7 Q Is that correct?

8 A Yes.

9 Q Did you enter that plea voluntarily?

10 A Yes.

11 Q Did anybody force you or induce you to enter a  
12 plea of Guilty at that time?

13 A No.

14 Q Did anybody promise you -- make any promises to  
15 you in order to induce you to enter a plea of Guilty?

16 A Yes.

17 Q Would you please state what those promises were?

18 A I wouldn't be indicted for any other charges or  
19 any gun charges that were held on me would be dropped.

20 Q Were you not specifically informed by myself that  
21 we would not indict you for two other bank robberies which you  
22 had admitted doing?

23 A Right.

24 Q And that I would not prosecute you for the gun  
25 charges arising out of this particular robbery; is that correct?



1 3

Derrick - direct

2 A Yes.

3 Q Did I not also tell you that I would make sure  
4 that if you testified here today -- if you cooperated with the  
5 Government -- that I would notify the Judge that is to sentence  
6 you; is that not correct?

7 A Yes.

8 Q Did I make any further promises to you other than  
9 that?

10 A No.

11 Q Did I not also tell you hhat I would inform the  
12 State officials of your cooperation with the Federal Government;  
13 is that not correct?

14 A Yes.

15 Q Are you under arrest at the present time for any  
16 offenses in the State system?

17 A Yes.

18 Q What were you arrested in the State for?

19 A Attempted homicide.

20 Q Are you awaiting trial in the Attempted Homicide?

21 A Yes.

22 Q Do you intend to go to trial on the Attempted  
23 Homicide?

24 A Yes.

25 Q Aside from these promises -- Aside from the fact

1 4

Derrick - direct

2 that I told you we would notify the District Attorney of your  
3 cooperation, did I ever promise that I could help you in any  
4 further way with the State charges?

5 A No.

6 Q That I would merely inform the District Attorney,  
7 correct?

8 A Is there anything in addition to those factors  
9 which I have just mentioned that -- any other additional promises  
10 that were made to you to have you come here and testify before  
11 this Court?

12 A No.

13 Q Are you doing so of your own free and voluntary  
14 will?

15 A Yes.

16 Q Okay.

17 Did you or did you not commit a bank robbery on  
18 December 12, 1973 of the National Bank of North America?

19 A Yes.

20 Q And with whom did you rob that bank?

21 A Fritz Bastian, Larry Coates and myself.

22 THE COURT: Fritz Bastian, Larry Coates and your-  
23 self?

24 THE WITNESS: Yes.

25 Q And do you see Fritz Bastian, or the individual



1 6 Derrick - direct  
2 plans to rob the bank.

3 A The day before.

4 Q The day before the bank robbery?

5 A Yes.

6 Q Who else did you meet with?

7 A Fritz, Larry and Danny.

8 Q Fritz, meaning this defendant Fritz Bastian, Larry  
9 Coates, and another individual known to you as Danny?

10 A Yes.

11 Q Was there anyone else there?

12 A And Mitch.

13 Q Another man known to you as Mitch?

14 A Yes.

15 Q What was said during the course of that meeting?

16 A A paper was drawn of the bank, and we was told how  
17 to do -- how to go into the bank, and who was to go in first,  
18 and Fritz was to go into the room and take the Guard's guns from  
19 him.

20 Q You were receiving instructions as to how to rob  
21 the bank?

22 A Yes.

23 Q Who was giving the instructions?

24 A Danny Steele --

25 THE COURT: Danny who?

1 7

Derrick - direct

2

MISS O'BRIEN: Danny Staley.

3

Q . Do you remember what your instructions were?

4

A To go in after Fritz got the Guard's gun, and get

5

up over the ledge, and the money would be handed to me.

6

Q Do you recall what the instructions was as to Mr.

7

Bastian?

8

A To take the Guard's gun -- get into the little

9

room, take the Guard's gun, and go around to the back and give

10

the bag to the Tellers.

11

Q What do you mean by the bag? What kind of bag are

12

you referring to?

13

A The bags for the money.

14

Q What kind of bags were they?

15

A Paper bags.

16

Q Did Mr. Bastian have these bags on his person?

17

A Yes.

18

Q From whom did he get the bags?

19

A From the store.

20

Q Where is this store?

21

A Danny's store.

22

Q This fellow has a store, and you are meeting at

23

Danny's store?

24

A Yes.

25

Q Okay.



1 8

Derrick - direct

2

3

Was there any other instructions that were given  
to you at this time?

4

A No, except for Mitch to have the car --

5

6

Q This fellow Mitch was supposed to be the getaway  
driver?

7

A Yes.

8

Q Who was supposed to go into the bank?

9

A All of us.

10

11

12

Fritz was supposed to go in first, get into the  
room, and act like he is making an account or something, and  
then we're supposed to go in after, and he gets the Guard's gun.

13

14

Q It was you, Fritz and Mr. Coates -- Larry Coates  
that was supposed to go into the bank?

15

A Yes.

16

Q Did you go to the bank that afternoon?

17

A Yes.

18

Q Who drove you to the bank?

19

A Mitch.

20

21

Q Did you accompany Mr. Bastian and Mr. Coates to  
the bank in the same car?

22

A Yes.

23

THE COURT: Did Danny Staley go with you?

24

A No.

25

Q What occurred at the bank?

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Coulson=direct

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D A N N Y O. C O U L S O N , called as a witness,

having been first duly sworn by the Clerk of the Court,

testified as follows:

DIRECT EXAMINATION

BY MISS O'BRIEN:

Q Your occupation, please?

A Special agent of the Federal Bureau of  
Investigation.

Q How long have you been so employed?

A Eight years next month.

Q Were you so employed on January 9, 1974?

A Yes, Ma'am, I was.

Q On that date in the course of your employment,  
did you have occasion to interview this defendant,  
Fritz Bastian?

A Yes, Ma'am.

Q Would you please tell us where you interviewed  
him?

A 112th Precinct, New York City Police Department,  
Queens, New York.

Q Do you know approximately what time of day?

A Sometime after 9:00 o'clock p.m.

Coulson-direct

14           Q           Prior to your interviewing him, did you give him his Miranda -- his constitutional warnings?

          A           Yes Ma'am, I did.

          Q           Would you please state the circumstances.

          A           I had Mr. Bastian removed from a holding cell in the precinct and taken to an office. After he came into the office I introduced myself to him, shook hands, displayed my credentials to him and told him I was with the FBI and that I would like to speak to him about a bank robbery, and before I would speak to him I would have to advise him of his constitutional rights.

                      I produced a form which had the rights set forth on it. I read them. I asked him if he could read. He said he could. I said, "Would you read the rights yourself on the form."

                      He said, "Yes."

                      He looked at the form and read them out loud to me. After he completed the form he said he understood them.

                      I said, "Do you want to sign the form and talk to me?"

                      He said, "Yes," and signed the form.

                      MISS O'BRIEN: May I have this marked for identification?

                      THE CLERK: Rights form marked for



Coulson-direct

1  
2 Q After Mr. Bastian had signed this form, did  
3 Mr. Bastian ever make any statements to you concerning the  
4 robbery at the National Bank of North America on December 12th?

5 A Yes, ma'am, he did.

6 Q Would you please tell us what he did to you  
7 and what you said to him after he signed that form.

8 A I told him specifically what bank we were  
9 interested in and what bank we considered him a suspect in.  
10 I asked if he would like to talk about it and he said, "Yes,"  
11 and he commenced to tell me what happened in the bank robbery.

12 Very shortly after that I interrupted. I said, "Do  
13 you have any objection to giving me a signed statement as  
14 to what happened?"

15 He said, no, he had no objection at all.

16 I explained that I would write the statement and that  
17 if it were true and correct he would sign it -- if it was  
18 the truth and he said he had no objection.

19 Q Did he thereafter give you a statement concern-  
20 ing his role in the robbery?

21 A Yes.

22 Q Did you reduce that statement into writing?

23 A Yes, ma'am, I did.

24 Q Do you have that with you today?

25 A Yes, the statement starts on the bottom of this

1 9 Coulson - direct

2 A Yes, ma'am, I recall.

3 Q And do you remember Mr. Bastian wearing the Afro  
4 on that occasion?

5 A I specifically remember him wearing the Afro, yes,  
6 ma'am.

7 Q And do you remember Mr. Bastian having an earring  
8 in his ear --

9 A Yes, ma'am.

10 Q (continuing) -- on that occasion?

11 A Yes.

12 Q Now, after you had formally -- Well, you had  
13 fingerprinted and processed him; did you conduct a search of  
14 Mr. Bastian's person?

15 A I conducted a search of Mr. Bastian's person prior  
16 to the photographing and fingerprinting, immediately before he  
17 was fingerprinted.

18 Q And did your search reveal anything?

19 A Yes, ma'am.

20 Q And what did your search reveal?

21 A Two torn portions of United States currency in  
22 the denomination of one dollar. It would be two one dollar bills.

23 Q All right, I am going to show you two partial one  
24 dollar bills, and ask if you can identify those dollar bills?

25 A Yes, ma'am.



1 10 Coulson - direct

2 Q And what are those dollar bills?

3 A These are two dollar bills that were taken from  
4 his person at the time that we searched him.

5 Q And where from his person?

6 A I recall now, ma'am, that they were taken from  
7 his hatband.

8 Q Was Mr. Bastian wearing a hat when he was appre-  
9 hended?

10 A I do not know if he were wearing a hat when he  
11 was apprehended or not.

12

Notes fl 13

(continued on next page.)

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1 But I would propose to put the second count  
2 of the indictment to the jury first. If they find  
3 him guilty of the second count, I would tell them it  
4 would be necessary to find them guilty of the first.  
5 That is not the way that Judge Mishler did it. He  
6 said if you find him guilty of the second count,  
7 disregard the first count. I propose to charge  
8 that if you find him guilty on the second, it is  
9 necessary to find him guilty on the first. If you  
10 find him not guilty of the second, then you must  
11 consider --

12 MR. LOPEZ: I prefer Judge Mishler's charge  
13 in that if they find him guilty --

14 THE COURT: Well, then you must proceed to  
15 the other --

16 MR. LOPEZ: Well, then yours is satisfactory.

17 THE COURT: The first is lesser.

18 MR. LOPEZ: Yes, that is satisfactory.

19 (The following occurred in open court:)

20 (Court's charge to the jury.)

21 THE COURT: Now, ladies and gentlemen of the  
22 jury, you have heard the evidence and the arguments  
23 of counsel, and it is now my duty to give you the  
24 instructions of the Court as to the law applicable  
25 to this case.



## Charge of the Court

513

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It is your duty as jurors to follow the law as stated in the instructions of the Court, and to apply the rules of law so given to the facts as you find them from the evidence in the case.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be considered with the wisdom of any rule of law stated by the Court.

Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in this case.

You must not permit yourselves to be governed by sympathy, bias, prejudice or any other consideration not founded on the evidence and these instructions on the law.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same

1  
2 evidence presented to all the jurors; and to arrive  
3 at a verdict by applying the same rules of law,  
4 as given in the instructions of the Court.

5 You have been chosen and sworn as jurors in  
6 this case to try the issues of fact presented by  
7 the allegations of the indictment and the denial  
8 made by the "Not Guilty" plea of the accused.

9 You are to perform this duty without bias  
10 or prejudice as to any party.

11 Again, the law does not permit jurors to  
12 be governed by sympathy, prejudice, or public opinion  
13 Both the accused and the public expect that you  
14 will carefully and impartially consider all the  
15 evidence in the case, follow the law as stated by  
16 the Court and reach a just verdict, regardless of  
17 the consequences.

18 I am not sending the exhibits which have been  
19 received in evidence with you as you retire for your  
20 deliberations. You are entitled, however, to see  
21 any or all of these exhibits as you consider your  
22 verdict. I suggest that you begin your deliberations  
23 and then, if it would be helpful to you, you may  
24 ask for any or all of the exhibits simply by sending  
25 a note to me through one of the United States



marshals.

The law presumes a defendant to be innocent of a crime. It does say defendant, although accused begins the trial with a "clean slate" -- with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused.

So the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

It is not required that the Government prove guilt beyond all possible doubt. The test is one of reasonable doubt.

A reasonable doubt is a doubt based on reason and common sense -- the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

The jury will remember that a defendant is

1  
2 never to be convicted on mere suspicion or  
3 conjecture.

4 The burden is always upon the prosecution  
5 to prove guilt beyond a reasonable doubt. This  
6 burden never shifts to a defendant, for the law  
7 never imposes upon a defendant in a criminal case  
8 the burden or duty of calling any witnesses or  
9 producing any evidence whatsoever. So if the jury  
10 views the evidence in the case as reasonably  
11 permitting either of two conclusions -- one of  
12 innocence, the other of guilt -- the jury should,  
13 of course, adopt the conclusion of innocence.

14 Again, a reasonable doubt means a doubt  
15 sufficient to cause a prudent person to hesitate to  
16 act in the most important affairs of his or her  
17 life.

18 Finding a citizen to be guilty of a crime and  
19 subjecting him to criminal penalties is a very  
20 serious matter. You will consider this fact in  
21 deciding whether or not you have a reasonable  
22 doubt.

23 (continued next page.)  
24  
25



dds:pc  
take 2/3

## Charge

517

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2 THE COURT: (continuing) An indictment is  
3 but a formal method of accusing a defendant of a  
4 crime. It is not evidence of any kind against the  
5 accused.

6 There are two types of evidence from which  
7 a jury may properly find a defendant guilty of a  
8 crime. One is direct evidence -- such as the  
9 testimony of an eyewitness. The other is circum-  
10 stantial evidence -- the proof of facts and  
11 circumstances which rationally imply the existence  
12 or non-existence of other facts because such other  
13 facts usually follow according to the common  
14 experience of mankind.

15 Thus, the footprint of a man in the sand  
16 implied to Robinson Crusoe that there was another  
17 man with him on the desert island, and indeed,  
18 there was, the man Friday.

19 Thus, on the one hand you may have direct  
20 evidence of the issue, and on the other hand, you  
21 may have circumstantial evidence of the issue. The  
22 law does not hold that one type of evidence is  
23 necessarily of better quality than the other. The  
24 law requires only that the Government prove its  
25 case beyond a reasonable doubt, both on the direct

## Charge

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2 and circumstantial evidence. At times, the jury  
3 might feel that circumstantial evidence is of  
4 better quality.

5 At other times, they may feel direct  
6 evidence is of better quality. That judgment is  
7 left entirely to you.

8 As a general rule, the law makes no dis-  
9 tinction between direct and circumstantial evidence,  
10 but simply requires that, before convicting a  
11 defendant, the jury be satisfied of the defendant's  
12 guilt beyond a reasonable doubt from all the  
13 evidence in the case.

14 Now, as to this particular indictment, it is  
15 charged in the indictment in count 1:

16 That on or about December 12, 1973, within  
17 the Eastern District of New York, the defendant,  
18 knowingly and wilfully, by force, violence, and  
19 intimidation, did take from the person and presence  
20 of employees of the National Bank of North America,  
21 152-80 Rockaway Boulevard, Queens, New York,  
22 approximately seventeen thousand thirty-eight  
23 dollars and forty-nine cents (\$17,038.49) in  
24 United States currency, which money was in the care,  
25 custody, control, management and possession of the



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2 said bank, the deposits of which bank were then  
3 and there insured by the Federal Deposit Insurance  
4 Corporation. in violation of Section 2113(a) of  
5 Title 18 of the United States Code, and count 2,  
6 which is the more serious of the two counts, but  
7 contains essentially the same charge, but which  
8 in addition, charges:

9 That in committing the offense of bank  
10 robbery hereinabove charged, the defendant assaulted  
11 and put in jeopardy the lives of the said bank  
12 employees, as well as the lives of other persons  
13 present, by the use of a dangerous weapon, in  
14 violation of Section 2113(d) of Title 18 of the  
15 United States Code,

16 Let me just read you the pertinent portions  
17 of Section 2113(a) of Title 18 of the United States  
18 Code. The pertinent section provides that:

19 "Whoever, by force and violence or by  
20 intimidation, takes, or attempts to take, from the  
21 person or presence of another, any property or  
22 money or any other thing of value belonging to,  
23 or in the care, custody, control, management or  
24 possession of, any bank;

25 "Or, whoever enters or attempts to enter

any bank, or any building used in whole or in part as a bank, with intent to commit in such bank, or building, or part thereof, so used, any felony affecting such bank and in violation of any statute of the United States, or of any larceny, shall be in violation of the Code."

Section 2013(d) of Title 18, which pertains to Count 2 which is the more serious charge, provides in pertinent part:

"Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) "--assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be in violation of the Code ."

Section 2113(f) of Title 18 defines the term "bank" to mean any bank the deposits of which are insured by the FDIC, the Federal Deposit Insurance Corporation.

Thus from a reading of the indictment and the statute, I think we can determine that there are the following essential elements with respect to each count. With respect to count 1, there are four essential elements that are required to be



1  
2 proved by the Government in order to establish  
3 the first offense charged in the indictment:

4 First: The act or acts of taking, from the  
5 person or presence of another, money belonging to  
6 or in the care, custody, control, management, or  
7 possession of bank, as charged;

8 Second: The act or acts of taking such  
9 money by force of violence, or by means of  
10 intimidation;

11 Third: Doing such act or acts knowingly and  
12 wilfully.

13 Fourth: The bank was a bank, the deposits  
14 of which were insured by the Federal Deposit  
15 Insurance Corporation.

16 Now, in the case of the second count, the  
17 more serious charge, there are 5 essential elements  
18 which are required to be proved in order to estab-  
19 lish the offense charged in the second count of the  
20 indictment:

21 First: The act or acts of taking, from the  
22 person or presence of another, money belonging to  
23 or in the care, custody, control, management, or  
24 possession of a bank, as charged;

25 Second: The act or acts of taking such

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2 money by force or violence, or by means of  
3 intimidation;

4 Third: The act or acts of assaulting or  
5 of putting in jeopardy the life of any person by  
6 the use of a dangerous weapon or device, while  
7 engaged in stealing such money from the bank, as  
8 charged; and

9 Fourth: Doing such acts or act knowingly  
10 and wilfully.

11 Fifth: The bank was one the deposits of  
12 which were insured by the Federal Deposit Insurance  
13 Corporation.

14 As stated before, the burden is always upon  
15 the prosecution to prove beyond a reasonable doubt  
16 every essential element of the crime charged; the  
17 law never imposes upon a defendant in a criminal  
18 case the burden or duty of calling any witnesses  
19 or producing any evidence.

20 One of the words that is used both in the  
21 indictment and in the statute is the word "wilfully."  
22 An act is done "wilfully" if done voluntarily and  
23 intentionally, and with the specific intent to do  
24 something the law forbids; that is to say, with  
25 bad purpose either to disobey or to disregard the



1  
2 law.

3 Another group of words that is used in  
4 both sections of the statute and in the indictment  
5 are the words "to take by intimidation." To take,  
6 or attempt to take, "by intimidation" means  
7 wilfully to take, or attempt to take, by putting  
8 in fear of bodily harm. Such fear must arise from  
9 the wilful conduct of the accused, rather than from  
10 some mere tempermental timidity of the victim;  
11 however, the fear of the victim need not be so great  
12 as to result in terror, panic or hysteria.

13 A taking, or an attempted taking, by  
14 intimidation, must be established by proof of one  
15 or more acts or statements of the accused which  
16 were done or made, in such a manner, and under  
17 such circumstances as would produce in the ordinary  
18 person fear of bodily harm.

19 However, actual fear need not be proved.  
20 Fear, like intent, may be inferred from statements  
21 made and acts done or omitted by the accused, and  
22 by the victim as well; and from all the surrounding  
23 circumstances as shown by the evidence in the case.

24 To take by force and violence means that  
25 there is physical force used, and that it was not

1  
2 a peaceful taking such as in an embezzlement.

3 An act is done "knowingly" if done  
4 voluntarily and intentionally, and not because of  
5 mistake or accident or other innocent reason.

6 The purpose of adding the word "knowingly"  
7 was to insure that no one would be convicted for  
8 an act done because of mistake, or accident, or  
9 other innocent reason.

10 As stated before, with respect to an  
11 offense such as charged in this case, specific  
12 intent must be proved beyond a reasonable doubt  
13 before there can be a conviction.

14 Intent ordinarily may not be proved directly,  
15 because there is no way of fathoming or scrutinizing  
16 the operations of the human mind. But you may  
17 infer the defendant's intent from the surrounding  
18 circumstances. You may consider any statement  
19 made and done or omitted by the defendant, and all  
20 other facts and circumstances in evidence, which  
21 indicate his state of mind. It is ordinarily  
22 reasonable to infer that a person intends the  
23 natural and probable consequences of acts knowingly  
24 done or knowingly omitted.

25 Now, the word "possession" is used in the



1  
2 statute when it talks in terms of money in the  
3 possession of the bank.

4 The law recognizes two kinds of possession:  
5 actual possession and constructive possession. A  
6 person who knowingly has direct physical control over  
7 a thing, at a given time, is then in actual possession  
8 of it.

9 A person, who, although not in actual  
10 possession, knowingly has both the power and the  
11 intention at a given time to exercise dominion or  
12 control over a thing, either directly or through  
13 another person, or persons, is then in constructive  
14 possession of it.

15 The law recognizes also that possession may  
16 be sole or joint. If one person alone has actual or  
17 constructive possession of a thing, possession is  
18 sole. If two or more persons share actual or  
19 constructive possession of a thing, possession is  
20 joint.

21 If you should find beyond a reasonable doubt  
22 from the evidence in the case that, at the time and  
23 place of the alleged offense, the National Bank  
24 of North America either alone or jointly with  
25 others, had actual or constructive possession of the

///a

Charge

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2 money described in the indictment, then you may  
3 find that such money was in the possession of the  
4 National Bank of North America, within the meaning  
5 of the word "possession" as used in these instructions

6 Now, in the indictment and in the statute,  
7 in the second count, the more serious count, the  
8 word "assault" is used.

9 If the jury should find beyond a reasonable  
10 doubt from the evidence in the case, that the  
11 accused did wilfully commit robbery of the bank,  
12 as charged, then the jury must proceed to determine  
13 whether the evidence in the case establishes that  
14 the accused, in committing robbery of the bank,  
15 assaulted or put in jeopardy the lives of the said  
16 bank employees, as well as the lives of other  
17 persons present, as charged in the indictment.

18 Any wilful attempt or threat to inflict  
19 injury upon the person of another, when coupled  
20 with an apparent present ability to do so, or any  
21 intentional display of force such as would give  
22 the victim reason to fear or expect immediate  
23 bodily harm, constitutes an assault. An assault  
24 may be committed without actually touching, or  
25 striking, or doing bodily harm to the person of



another.

So a person who has the apparent present ability to inflict bodily harm, or injury upon another person, and wilfully attempts or even threatens to inflict such bodily harm, as by intentionally flourishing or pointing a pistol or gun at another person, may be found to have assaulted such person.

Now, a dangerous weapon or device, which is also in count 2, in the second portion of the statute which I read to you -- a dangerous weapon or device includes anything capable of being readily operated, manipulated, wielded, or otherwise used by one or more persons to inflict severe bodily harm or injury upon another person. So an operable firearm such as a pistol, revolver, or other gun capable of firing a bullet or other ammunition may be found to be a dangerous weapon or device.

(continued next page.)

HS:pc  
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## Charge

THE COURT: (continuing) To put in jeopardy the life of a person by the use of a dangerous weapon or device means then to expose such a person to a risk of death or the fear of death by the use of such dangerous weapon or device.

Any variance between the allegation of the indictment and the evidence in the case as to the size and type of any firearm or gun which may have been involved in the commission of the alleged offense is immaterial.

Now, as I told you at the outset of the case, statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact.

When the attorneys on both sides stipulate or agree as to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence, and regard that fact as true.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them, and all exhibits received in evidence regardless of who may have produced them, and all facts which may have been admitted or



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## Charge

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2 stipulated, and all facts and evidence which may  
3 have been judicially noted, and all applicable  
4 presumptions stated in these instructions.

5 Any evidence as to which an objection was  
6 sustained by the Court and any evidence ordered  
7 stricken by the Court must be entirely disregarded.

8 Evidence does include, however, that which  
9 is brought out from witnesses on cross examination  
10 as well as that which is testified to on direct  
11 examination.

12 Unless you are otherwise instructed,  
13 anything you may have seen or heard outside the  
14 courtroom is not evidence and must be entirely  
15 disregarded.

16 You are to consider only the evidence in  
17 the case and your verdict is to be based on the  
18 evidence alone.

19 But in your consideration of the evidence,  
20 you are not limited to the bald statements of the  
21 witnesses.

22 In other words, you are not limited solely  
23 to what you see and hear as the witnesses testify.  
24 You are permitted to draw from facts which you find  
25 have been proved such reasonable inferences as you

## Charge

feel are justified in the light of experience.

Inferences are deductions or conclusions which reasonable and common sense lead the jury to draw from the facts which have been established by the evidence in the case.

If a lawyer asks a witness a question which contains an assertion of fact, you may not consider the assertion as evidence of the facts. The lawyers' statements are not evidence.

Now, the guilt of a defendant may be established without proof that the accused personally did every act constituting the offense charged.

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal.

"Whoever wilfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

In other words, every person who wilfully participates in the commission of a crime may be found to be guilty of that offense. Participation is wilful if done voluntarily and intentionally, and



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## Charge

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3 with the specific intent to do something the  
4 law forbids, or with the specific intent to fail  
5 to do something the law requires to be done; that  
6 is to say, with bad purpose either to disobey or  
7 disregard the law.

8 Now, evidence relating to any statement or  
9 act or omission claimed to have been made or done  
10 by a defendant outside of court, and after a  
11 crime has been committed, should always be  
12 considered with caution and weighed with great care,  
13 and all such evidence should be disregarded entirely  
14 unless the evidence in the case convinces the jury  
15 beyond a reasonable doubt that the statement or  
16 act or omission was knowingly made or done.

17 A statement or act or omission is "knowingly"  
18 made or done, if done voluntarily and intentionally,  
19 and not because of mistake or accident or other  
20 innocent reason.

21 In determining whether any statement or  
22 act or omission claimed to have been made by a  
23 defendant outside of court, and after a crime has  
24 been committed, was knowingly made or done, the  
25 jury should consider the age, sex, training,  
education, occupation and physical and mental

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## Charge

condition of the defendant, and his treatment while in custody or under interrogation, as shown by the evidence in the case, and also, other circumstances in evidence surrounding the making of the statement or act or omission, including whether before the statement or act or omission was made or done, the defendant knew or had been told and understood that he was not obligated or required to make or do the statement or act or omission claimed to have been made or done by him, any statement or act or omission that he might make or do could be used against him in court, that he was entitled to the assistance of counsel before making any statement either oral or in writing or before doing any act or omission, and that if he was without money or means to retain counsel of his own choice an attorney would be appointed to advise and represent him free of cost or obligation.

If the evidence in the case does not convince beyond a reasonable doubt that a confession was made voluntarily and intentionally, you should disregard it entirely.

On the other hand, if the evidence in the case does show beyond a reasonable doubt that a



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confession was, in fact, voluntarily and intentionally made by a defendant, you may consider it as evidence in the case against the defendant who voluntarily and intentionally made the confession.

If it is peculiarly within the power of either the prosecution or the defense to produce a witness who could give material testimony in an issue in the case, failure to call that witness may give rise to an inference that his testimony would be unfavorable to that party.

However, no such conclusion should be drawn by you with regard to a witness who is equally available to both parties, or where the witness' testimony would be merely cumulative.

The jury will always bear in mind that the law never imposes on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence whatever.

You, as jurors, are the sole judges of the credibility of the witnesses and the weight their testimony deserves.

You should carefully scrutinize all the testimony given, the circumstances under which each witness who has testified and every matter in

## Charge

evidence which tends to show whether a witness is worthy of belief.

Consider each witness' intelligence, motive, state of mind, demeanor and manner while on the stand. Consider the witness' ability to observe the matters as to which he has testified, and whether he impresses you as having an accurate recollection of these matters.

Consider also any relation each witness may bear to either side of the case, the manner in which each witness might be affected by the verdict, and extent to which, if at all, each witness is either supported or contradicted by other evidence in the case.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction, may see or hear it differently. An innocent misrecollection, like failure of recollection, is not an uncommon experience. In weighing the effect of the discrepancy, always consider whether it pertains to a matter of importance or an



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## Charge

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unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

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On the one hand, you have direct evidence of the issue, and on the other hand, you may have circumstantial evidence of the issue. The law does not hold that one type of evidence is necessarily a better quality than the other. The law requires only that the Government prove its case beyond a reasonable doubt, both on the direct and circumstantial evidence.

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At times the jury might feel that circumstantial evidence is a better quality. At other times they may feel that direct evidence is of better quality. That judgment is left entirely to you.

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After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves.

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Now, we had the testimony of an accomplice in this case.

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An accomplice is one who unites with another person in the commission of a crime voluntarily and with common intent.

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An accomplice does not become incompetent

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## Charge

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as a witness because of participation in the crime charged. On the contrary, the testimony of an accomplice alone, if believed by the jury, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported by other evidence.

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However, the jury should keep in mind that such testimony is also to be received with great caution and weighed with great care.

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You should never convict a defendant upon the unsupported testimony of an alleged accomplice, unless you believe that unsupported testimony beyond a reasonable doubt.

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The testimony of a witness may be discredited or impeached, by showing that he previously made statements which are inconsistent with his present testimony.

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The earlier contradictory statements are admissible only to impeach the credibility of the witness, and not to establish the truth of these statements. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

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If a witness is shown knowingly to have



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## Charge

testified falsely concerning any material matter, you have a right to distrust such witness' testimony, in other particulars, and you may reject all the testimony of that witness, or give it such credibility as you may think it deserves.

Now, the law does not compel a defendant in a criminal case to take the witness stand and testify, and no presumption of guilt may be raised, and no inference of any kind may be drawn from the failure of a defendant to testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence of any kind whatsoever.

It is the duty of the attorney on each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible.

You should not show prejudice against an attorney or his client because the attorney had made objections.

Upon allowing testimony or other evidence to be introduced over the objection of an attorney, the Court does not, unless expressly

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stated, indicate any opinion as to the weight or the effect of such evidence.

As stated before, the jurors are the sole judges of the credibility of all witnesses, and the weight and effect of such evidence.

As stated before, the jurors are the sole judges of the credibility of all witnesses, and the weight and effect of all evidence.

When the Court has sustained an objection to a question addressed to a witness, the jury must disregard the question entirely and may draw no inferences from the wording of it, or speculate as to what the witness would have said if he had been permitted to answer any question.

(continued next page.)



124a

MS:pc  
take 3/2

Charge

539

1  
2 THE COURT: (continuing) You are here to  
3 determine the guilt or innocence of the accused  
4 from the evidence in the case. You are not called  
5 upon to return a verdict as to the guilt or  
6 innocence of any other person or persons. So, if  
7 the evidence in the case convinces you beyond a  
8 reasonable doubt of the guilt of the accused, you  
9 should so find, even though you may believe one  
10 or more other persons are guilty.

11 But if any reasonable doubt remains in your  
12 minds, after impartial consideration of all the  
13 evidence in the case, it is your duty to find the  
14 accused not guilty.

15 Now, I am going to ask you to consider the  
16 counts of the indictment in their reverse order.  
17 Consider count 2 of the indictment first. That is  
18 the more serious charge.

19 If you find the defendant guilty on count  
20 2, then it necessarily follows that you will find him  
21 guilty on count 1.

22 If you find the defendant not guilty on count  
23 2, then you must proceed to determine separately  
24 the question of his guilt or innocence as to count  
25 1.

1  
2 You will recall that count 2 is the offense  
3 of not only committing the robbery of a bank as  
4 I have charged you, but also committing such robbery  
5 with a dangerous weapon or device and with the  
6 intent to commit an assault as I have defined it for  
7 you. That is the more serious of the two charges  
8 and you should consider that first.

9 If, as I have stated, you find him guilty on  
10 count 2, then it should necessarily follow that  
11 you find him guilty on count 1. If you find him  
12 not guilty on count 2, then you should proceed to  
13 consider count 1. .

14 If, in the course of your deliberations, you  
15 should find him not guilty on both counts, that's  
16 the end of it. You should so then report your  
17 verdict. The verdict must represent the considered  
18 judgment of each juror. In order to return a  
19 verdict, it is necessary that each juror agree  
20 thereto. Your verdict must be unanimous.

21 It is your duty as jurors to consult with  
22 one another and to deliberate with a view to  
23 reaching an agreement if you can do so without  
24 violence to individual judgment.

25 Each of you must decide the case for



1  
2 himself, but do so only after an impartial  
3 consideration of the evidence in the case with  
4 your fellow jurors.

5 In the course of your deliberations, do  
6 not hesitate to re-examine your own views and change  
7 your opinion if convinced it is erroneous. But  
8 do not surrender your honest conviction as to the  
9 weight or effect of evidence solely because of the  
10 opinion of your fellow jurors, or for the mere  
11 purpose of returning a verdict.

12 Remember at all times, you are not  
13 partisans. You are judges -- judges of the facts.  
14 Your sole interest is to seek the truth from the  
15 evidence in the case.

16 There is nothing peculiarly different in the  
17 way a jury should consider the evidence in a  
18 criminal case from that in which all responsible  
19 persons treat any question depending upon evidence  
20 presented to them.

21 You are expected to use your good sense,  
22 consider the evidence in the case for only those  
23 purposes for which it has been admitted, and give  
24 it a reasonable and fair construction in the light  
25 of your common knowledge of the natural tendencies

1  
2 and inclinations of human beings.

3 If the accused be proved guilty beyond a  
4 reasonable doubt, say so. If not so proved guilty,  
5 say so.

6 If any reference by the Court or by counsel  
7 to matters of evidence does not coincide with your  
8 own recollection, it is your recollection which  
9 should control during your deliberations.

10 The punishment provided by law for the  
11 offense charged in the indictment is a matter  
12 exclusively within the province of the Court, and  
13 should never be considered by the jury in any way  
14 in arriving at an impartial verdict as to the guilt  
15 or innocence of the accused.

16 Upon retiring to the jury room, the forelady  
17 sitting closest to me on this end of the bench in  
18 the front row will act as your Foreman unless she  
19 declines to do so. In which case you will elect  
20 a Foreman from among your number.

21 The Foreman will preside over your delibera-  
22 tions and will be spokesman here in court.

23 If it becomes necessary during your delibera-  
24 tions to communicate with the Court, you may send a  
25 note by deputy marshal, signed by your foreman or



1  
2 by one or more members of the jury.

3 No member of the jury should attempt to  
4 communicate with the Court by other means other than  
5 in writing.

6 The Court will never communicate with any  
7 member of the jury on any subject touching the  
8 merits of the case other than in writing or  
9 orally here in open court.

10 You will note from the oath about to be  
11 taken by the marshals that they, too, as well as  
12 all other persons, are forbidden to communicate in  
13 any way or manner with any member of the jury on  
14 any subject touching the merits of the case.

15 Bear in mind also that you are never to  
16 reveal to any person -- not even to the Court --  
17 how the jury stands numerically or otherwise on the  
18 question of the guilt or innocence of the accused,  
19 until after you have reached a unanimous verdict.

20 Now, ladies and gentlemen, that is my charge  
21 to you and I am going to ask you to do a little  
22 more exercise and retire briefly to the other room  
23 while I take up certain matters with counsel.  
24 Then I will recall you before you begin your  
25 deliberations.

1  
2 Do not discuss the case before I send you back  
3 after my discussions with counsel.

4 (Jury leaves courtroom.)

5 THE COURT: Ms. O'Brien?

6 MS. O'BRIEN: I have nothing further.

7 THE COURT: Mr. Lopez?

8 MR. LOPEZ: No requests, no exceptions,  
9 your Honor.

10 THE COURT: All right, will you bring the  
11 jury back.

12 (Jury present.)

13 THE COURT: Alternate jurors, at this time  
14 the Court thanks you for your kind attention to  
15 the trial of this case and to the Court's  
16 charge. Unfortunately, you are not able to parti-  
17 cipate in the deliberations. You understand it  
18 is only the 12 jurors who are in the main box. We  
19 do appreciate the service that you have rendered.  
20 It is a valuable service. We almost had to use  
21 one of you this morning as you probably realized,  
22 when one of the other jurors were late.

23 I think you are to report back to the  
24 central jury room downstairs.

25 THE CLERK: Yes.



1 Would you please take your cards  
2 downstairs.

3 (Alternates leave.)

4 THE COURT: Please swear the marshals.

5 (Marshals sworn.)

6 THE COURT: All right, ladies and  
7 gentlemen, you may retire and begin your delibera-  
8 tions, and remember, if you wish to communicate  
9 with the Court, do so by written note through your  
10 lady foreman.

11 (Jury leaves courtroom.)

12 \* \* \*

13 (12:45 o'clock P.M.)

14 THE CLERK: Jury note received as Court's  
15 exhibit 1.

16 (Jury present.)

17 THE COURT: Madam Forelady, I have a note  
18 from you which says, "The jury has reached a  
19 verdict."

20 The Clerk will ask you what your  
21 verdict is.

22 THE CLERK: Madam Forelady, please rise.

23 How do you find the defendant Fritz  
24 Emanuel Bastian as to Count 1, guilty or not  
25 guilty?

1 JUROR NO. 1: The jury finds the  
2 defendant guilty.

3 THE CLERK: As to Count 1?

4 JUROR NO. 1: Yes.

5 THE CLERK: And how do you find the  
6 defendant: Fritz Emanuel Bastian as to Count 2,  
7 guilty or not guilty?

8 JUROR NO. 1: The jury finds the defendant  
9 guilty of Count 2.

10 THE CLERK: You say you find him guilty of  
11 Count 1 and Count 2 and so say you all.

12 MR. LOPEZ: May the jury be polled?

13 THE COURT: Yes.

14 THE CLERK: Juror No. 1, is that your  
15 verdict?

16 JUROR NO. 1: Yes.

17 THE CLERK: Juror No. 2, is that your  
18 verdict?

19 JUROR NO. 2: Yes.

20 THE CLERK: Juror No. 3, is that your  
21 verdict?

22 JUROR NO. 3: Yes.

23 THE CLERK: Juror No. 4, is that your  
24 verdict?

25 JUROR NO. 4: Yes.



1 THE CLERK: Juror No. 5, is that your  
2 verdict?

3 JUROR NO. 5: Yes.

4 THE CLERK: Juror No. 6, is that your  
5 verdict?

6 JUROR NO. 6: Yes.

7 THE CLERK: Juror No. 7, is that your  
8 verdict?

9 JUROR NO. 7: Yes.

10 THE CLERK: Juror No. 8, is that your  
11 verdict?

12 JUROR NO. 8: Yes.

13 THE CLERK: Juror No. 9, is that your  
14 verdict?

15 JUROR NO. 9: Yes.

16 THE CLERK: Juror No. 10, is that your  
17 verdict?

18 JUROR NO. 10: Yes.

19 THE CLERK: Juror No. 11, is that your  
20 verdict?

21 JUROR NO. 11: Yes.

22 THE CLERK: Juror No. 12, is that your  
23 verdict?

24 JUROR NO. 12: Yes.

25 THE CLERK: And so say you all.

1 THE COURT: ...ent, ladies and gentlemen  
2 of the jury: the Court thanks you for your kind and  
3 courteous attention to all of the evidence in the  
4 case and for your prompt verdict.

5 This is a valuable service which you  
6 performed. I do not know if you realize how  
7 valuable it is. Without good conscientious  
8 citizens like yourselves, the administration of  
9 justice would not occur.

10 You go with the Court's heartfelt thanks.  
11 We appreciate it very much. Thank you.

12 (Jury leaves courtroom.)

13 THE COURT: Mr. Lopez, do you wish to make  
14 your motions now?

15 MR. LOPEZ: May I reserve the motions, your  
16 Honor?

17 THE COURT: You may.

18 MR. LOPEZ: Thank you.

19 May I make them on the date of sentencing?

20 THE COURT: Yes, I see no reason why not.

21 MR. LOPEZ: The reason I do that is in the  
22 event something should occur to defendant, then he  
23 will have ample time to consider that. He wants  
24 to look at the record.

25 THE COURT: Mr. Bastian, step forward.





1 What is the bail?

2 MS. O'BRIEN: The bail is \$50,000 surety.

3 THE COURT: The bail will be continued, if  
4 the prosecution has no objection until the  
5 probation department has had an opportunity to render  
6 a pre-sentence report.

7 MS. O'BRIEN: Thank you.

8 THE COURT: The Court will take the motion  
9 at that time.

10 MR. LOPEZ: There is no date set for  
11 sentencing?

12 THE COURT: Anywhere from 6 to 8 weeks.

13 MR. LOPEZ: We will be notified?

14 THE COURT: Yes.

15 MR. LOPEZ: Thank you.

16  
17 \* \* \* \* \*

18  
19  
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24  
25  
I hereby certify that the foregoing is a  
true and accurate transcript from the sten-  
ographic notes in this proceeding.  
J. R. Shapiro  
Official Court Reporter  
U.S. District Court for the  
Eastern District of N.Y.

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